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TO  
THE RIGHT HONOURABLE  
**SIR CHARLES ABBOTT, KNT.**  
LORD CHIEF JUSTICE  
OF  
ENGLAND.

---

MY LORD,

I FEEL much gratified in dedicating this new Edition of HAWKINS'S PLEAS OF THE CROWN to your Lordship, inasmuch as it affords me the public opportunity of expressing my feelings of deep respect, (in common, I believe, with the Profession at large,) for that profound legal erudition which justly called your Lordship to the eminent station which you now fill. And having long practised in your Lordship's Court, it is with equal gratitude I acknowledge the kindness and urbanity I have ever received at your hands in the performance of my professional duties.

That your Lordship may long enjoy the vigour of Health adequate to the discharge of your arduous duties, is my sincere wish; nor will the completion of that wish be solely to your Lord-

ship's advantage; for that the administration of the Criminal Justice of the Kingdom should long remain under the vigilant inspection of an able and impartial Supreme Criminal Judge, is but the wish of a good Citizen for the security of the lives and liberties of his fellow subjects.

I have the honour to be

Your Lordship's

Most obedient humble Servant,

J. CURWOOD.

# P R E F A C E.

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**T**HE presenting a new Edition of MR. SERJEANT HAWKINS'S Work on the PLEAS OF THE CROWN to the Profession, the Editor feels does not require any apology. For although the law has been greatly altered in many respects since the work was first published, yet the great mass of it still remains law to this day ; and the work has, down to the present period, retained an undiminished reputation. To render the work more extensively useful, by inserting the variations made in the criminal law by modern statutes, and noting subsequent decisions of the Judges, is what the Editor has attempted. The manner of performing this task may perhaps require an apology:—but he submits his labours to the indulgent consideration of the Profession. There is, however, one liberty that he has taken with the original arrangement of the work, which he feels himself bound to explain his reasons for adopting. In the original arrangement of the learned author, he followed the course before adopted by the more ancient authors on Crown Law, viz. Staundforde, Hale, Pulton and Dalton, of dividing his felonies, into felonies at common law and felonies by statute. At a time when the felonies by statute were comparatively few, they formed but a sort of short appendix to the others,



and did not derange the natural distribution of the work. But now they have become so numerous, as to far exceed those at common law; and it became necessary to distribute them under proper heads, according to the subject matter to which they related. In doing this, it struck the Editor, that the whole of the First Book relative to Offences might be newly arranged, according to the Analysis of Mr. J. Blackstone; which he ventures to consider the most perfect Analysis of the law that has yet appeared. He has accordingly so arranged the First Book; but in doing it, he has left the text of Mr. S. Hawkins unimpaired, and has faithfully preserved it entire.

With respect to former Editions.—The last was published by Mr. Leach, in the year 1795. But it appears to the Editor of the present edition, that the book was swelled to an unnecessary bulk, by the insertion of much matter wholly irrelevant, or but slightly connected with a work which professed to treat only of “Pleas of the Crown:” for instance, the whole of the then Highway Act, verbatim, the Turnpike Act, &c. These excrescences are rejected in the present edition; but as Mr. Leach did also bring down the statutes and decisions to the date of his publication, the matter which he inserted, and is still retained, is distinguished by the mark with which he himself distinguished his own additions. (†) The subsequent statutes and the principal notes are the work of the present Editor. There is one other matter to which the

Editor wishes to advert, before he concludes. His objects are conciseness and correctness. He has not, therefore, accumulated all the cases which he could collect, and detailed them at length. He has also very sparingly referred to the rulings of single Judges. This is not done from disrespect to such decisions; but he has repeatedly heard the most able Judges,—the present and late Lord Chief Justices of the King's Bench, and others,—express their wish never to hear of *Nisi Prius* decisions quoted as authority. If they ought not to be received as settled law in civil actions, still less ought they in the construction of criminal statutes, particularly when it is considered under what circumstances of mere momentary consideration, a judge is frequently called upon at the Assizes to deliver an opinion upon the construction perhaps of a confusedly penned statute.

He has now only to repeat the hope, he has before expressed, that his labours will meet an indulgent consideration, and a pardon for the many imperfections which he fears may be found in the execution of his task.

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TO  
THE RIGHT HONOURABLE  
**THOMAS LORD PARKER,**  
*BARON OF MACCLESFIELD,*  
AND  
LORD CHIEF JUSTICE  
OF  
*ENGLAND.*

---

MY LORD,

**THE** following Treatise, containing that part o. the law, which is peculiarly under the administration of the chief justice of England, I presumed, in regard to the subject of it, to think of presenting to your Lordship; which your goodness having been pleased to permit, it is with the less uncasiness that I venture to make it public; for I could not hope to introduce it into the world with greater advantage than under your protection.

This was the real ground of my ambition to dedicate it to your Lordship, and not to give myself an opportunity of publishing how much I honour those wonderful talents that have raised you to so high a station. A private character indeed may be set forth to advantage, and many virtues in it be made known by an address of this nature, which might otherwise have lain for ever concealed; but your Lordship's is public and conspicuous, and can appear nowhere with so much lustre as when you sit in judgment, where that vast genius you are blessed with shines forth to all the world, adorned with all the improvements that human heart can furnish, and supported with the greatest courage and integrity.

And nothing less, my Lord, could give you that command of all the variety of business which comes before you, and that facility with which you dispatch it. The most intricate points of law, that have for ages lain in confusion and obscurity, when they fall under your Lordship's consideration, receive such light, are stated and explained with such exact method, and such propriety

priety and beauty of expression, that the most polite compositions appear not more elegant, nor the most demonstrative more convincing. This, my Lord, is the agreeable part of the exercise of your authority, being no violence to that general humanity which you delight to shew to all mankind. But the duties of your office require you sometimes to put on another character, and to shew the awful face of justice, to curb the rage of an unruly people, and to fright them into their duty by the terrors of the law; and it is with pleasure all good men see your Lordship pursue the prevailing vices of the age with such zeal and indignation, that crimes no longer appear less odious for being fashionable, nor are they more secure from punishment for being popular.

These, my Lord, are blessings which the whole nation shares in, and have an influence upon all parts of the civil administration. But we, who have the honour to attend your Lordship at the bar, are in a more particular manner to acknowledge our obligations for that candour and condescension with which you treat us. The encouragement you give to our weak endeavours, no less engages our affections, than your comprehensive knowledge and clear and accurate judgment command our reverence and esteem.

Such goodness charms all that approach and feel it; and it was with universal joy we saw your Lordship's firmness to the present establishment, and great services to your country, distinguished lately by an accession of honour from His Majesty, whose wisdom in conferring his favours has eminently appeared, by the many signal benefits the nation has received from those who have the honour to serve him. I am with greatest respect,

My Lord,

Your Lordship's

Most obliged and most humble Servant,

WILLIAM HAWKINS.

# THE

## AUTHOR'S PREFACE,

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**NOTHING** is more common than to hear those who have taken only a superficial view of the Crown-law, charge it with numberless hardships and undistinguishing rigour; whereas those, who have more fully examined it, agree that it wants nothing to make it admired, for clemency and equity, as well as justice, but to be understood. It is so agreeable to reason, that even those who suffer by it, cannot charge it with injustice; so adapted to the common good, as to suffer no folly to go unpunished, which that requires to be restrained: and yet so tender of the infirmities of human nature, as never to refuse an indulgence where the safety of the public will bear it: it gives the prince no power, but of doing good, and restrains the people from no liberty, but of doing evil.

It would be needless therefore to say any thing of the usefulness of this treatise, could I be so happy as any way to come up to the design of it, which was to vindicate the justice and reasonableness of the laws concerning criminal matters, and to reduce them into as clear a method, and explain them in as familiar a manner, as the nature of the thing will bear.

Had any of the great men, who formerly have written on this subject, gone through the whole law relating to it, all farther attempts of this kind had been unnecessary. The treatise published under the name of SIR MATTHEW HALE, is indeed very useful, and written in a clear method, and with great learning and judgment; but it is certainly very imperfect in the whole, and seems to be only a model or plan of a work of this kind, which is said to have been intended by him.

SIR EDWARD COKE's Third Institute is also a treatise of great learning, and not unworthy of the hand that produced it;

but yet seems by no means a complete work, many considerable heads being either wholly omitted in it, or barely touched upon.

The treatise of SIR WILLIAM STAUNDFORDE seems to be writ with great judgment, but he takes in a very small compass, scarce mentioning any offences under felonies.

As for the Treatises of LAMBARD, CROMPTON, PULTON, and DALTON, they, having an eye chiefly to the direction of justices of the peace, and treating of the Crown-law no farther than as it concerns them, are far from being complete systems of it.

Upon the whole, I apprehend that none of the authors before-mentioned were so perfect, but that, by reducing all the laws relating to this subject under one general scheme, they might generally be understood with much less difficulty than they have hitherto been. This it was induced me to write on this subject, and I hope to finish the whole in Two Books; proposing in this First to shew the nature of criminal offences; and in the Second, the manner of bringing offenders to punishment.

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# ANALYSIS

OF

## THE FIRST VOLUME

OF THE

### Pleas of the Crown.

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**PART I.—OF OFFENCES AGAINST MAN.**

**PART II.—OF OFFENCES AGAINST THE COMMONWEALTH.**

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## ADDENDA ET CORRIGENDA.

SINCE the greater part of this work has been in the press, several alterations have been made in the criminal law by the acts passed in the last session of parliament. It has become therefore, necessary to notice them, and they are added by way of Addenda to the work. These alterations have more particularly applied to matters connected with the trade of the kingdom.

### *Bankrupts.*

(Public Trade, c. 29.)

By the 5 Geo. 4. c. 98. the several statutes relating to bankruptcy have been repealed, and the whole consolidated into one act. The clauses therefore set out from the stat. 5 Geo. 2. c. 30. (vol. 1, p. 586.) are repealed, and in lieu thereof, it is enacted by sect. 108. of the above act of Geo. 4. "That if any bankrupt shall not, before three o'clock in the afternoon of the forty-second day after he shall have been declared bankrupt, notice thereof in writing having been first left at his usual place of abode, or served upon him in case he was in prison, and notice given in the London Gazette, of the issuing of the commission, and of the meetings of the commissioners, surrender himself to them, and sign or subscribe such surrender, and submit to be examined before them from time to time upon oath, or being a Quaker upon solemn affirmation; or if any such bankrupt upon such examination shall not discover all his real or personal estate, and how, and to whom, upon what consideration, and when he disposed of, assigned or transferred any of such estate, and all books, papers, and writings relating thereto, except such part as shall have been really and bona fide before sold or disposed of in the way of his trade, or laid out in the ordinary expense of his family; or if any such bankrupt shall not upon such examination deliver up to the commissioners all such part of such estate, and all books, papers, and writings relating thereunto, as be in his possession, custody, or power, (except the necessary wearing apparel of himself, his wife, and children,) or if any such bankrupt shall remove, conceal, or embezzle any part of such estate, to the value of ten pounds, or any books of account, papers or writings relating thereto, with intent to defraud his creditors, every such bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term, not less than seven years, as the court

Bankrupt not surrendering and submitting to be examined,

or not making a discovery of his estate and effects,

or not delivering up his goods, books, &c.

or concealing to the value of £10.

transported for life, &c.

“ before which he shall be convicted shall adjudge ; or shall be  
 “ liable to be imprisoned only, or imprisoned and kept to hard  
 “ labour in any common gaol, penitentiary house, or house of cor-  
 “ rection, for any term not exceeding seven years.”

*Artificers going abroad and Exporting Tools and Machinery, &c.*

(Public Trade, c. 29.)

- By stat. 5 Geo. 4. c. 97. which recites that, “ Whereas it is expedient that the several laws relative to artificers going into foreign parts should be repealed ;” it is therefore thereby enacted,
- 5 Geo. 1. c. 27. “ That from and after the passing of this act, a certain act passed  
 “ in the fifth year of King George the First, intituled An act to  
 “ prevent the inconveniences arising from seducing artificers in  
 “ the manufactures of Great Britain into foreign parts ; also so  
 “ much of a certain other act passed in the twenty-third year of  
 23 Geo. 2. c. 13. “ King George the Second, intituled, an Act for the effectual  
 “ punishing of persons convicted of seducing artificers in the  
 “ manufactures of Great Britain or Ireland out of the dominions  
 “ of the crown of Great Britain ; and to prevent the exportation of  
 “ utensils made use of in the woollen and silk manufactures from  
 “ Great Britain or Ireland into foreign parts ; and for the more  
 “ easy and speedy determination of appeals allowed in certain  
 “ cases, by an act made in the last session of parliament, relating  
 “ to persons employed in the several manufactures therein men-  
 “ tioned ; as relates to contracting with, enticing, persuading, or  
 “ endeavouring to persuade, solicit or seduce manufacturers,  
 “ workmen, and artificers, as therein mentioned ; also so much of  
 “ a certain other act passed in the twenty-second year of King  
 22 Geo. 3. c. 60. “ George the Third, intituled, An Act to prevent the seducing of  
 “ artificers or workmen employed in printing calicoes, cottons,  
 “ muslins, and linens, or in making or preparing blocks, plates,  
 “ or other implements used in that manufactory, to go to parts  
 “ beyond the seas ; and to prohibit the exportation to foreign  
 \* Sic. “ parts,\* any such blocks, plates, or other implements, as relates  
 “ to contracting with, enticing, persuading, or endeavouring to  
 “ seduce or encourage artificers and workmen as therein men-  
 “ tioned ; also so much of a certain other act passed in the par-  
 “ liament of Ireland in the twenty-fifth year of King George the  
 25 Geo. 3. “ Third intituled, An Act to prevent the practice of seducing  
 “ artificers and manufacturers of this kingdom, and of exporting  
 “ the several tools and utensils made use of in preparing and  
 “ working up the manufactures thereof, into parts beyond the  
 “ seas, as relates to contracting with, enticing, persuading, or en-  
 “ deavouring to persuade, soliciting or seducing manufacturers,  
 “ workmen, or artificers, as therein mentioned ; and also so much  
 “ of a certain other act passed in the twenty-fifth year of King  
 25 Geo. 3. c. 67. “ George the Third, intituled, an Act to prohibit the exportation  
 “ to foreign parts of tools and utensils made use of in the iron  
 “ and steel manufactures of this kingdom ; and to prevent the se-  
 “ ducing

“**seducing of artificers or workmen employed in those manufac-**  
 “**tures to go into parts beyond the seas, as relates to contracting**  
 “**with, enticing, persuading, or endeavouring to seduce or en-**  
 “**courage artificers or workmen as therein mentioned; also so**  
 “**much of a certain other act passed in the thirty-ninth year of**  
 “**King George the Third, intituled, An Act to explain and amend**  
 “**the laws relative to colliers in that part of Great Britain called**  
 “**Scotland; as punishes the seducing or attempting to seduce col-**  
 “**liers or others, as therein mentioned; together with every other**  
 “**law, statute, or enactment, relative to the same subjects, or any**  
 “**of them, and whether in force throughout or in any of the**  
 “**United Kingdom of Great Britain and Ireland, shall be, and**  
 “**the same are hereby repealed, save and except in as far as the**  
 “**same may have repealed any prior act or enactment.”**

and all laws re-  
lative to the sub-  
ject of seducing  
artificers, &c.  
repealed.

*Combination of Workmen.*

(Public Trade, c. 29.)

The stat. 5 Geo. 4. c. 95. reciting a variety of statutes from the 30 Ed. 1. to 57 Geo. 2. regulating different trades, repeals the same so far as relates to the combination of workmen, and “all other laws, statutes, and enactments, now in force throughout or in any part of the United Kingdom of Great Britain and Ireland, relative to combinations to obtain an advance of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or to regulate or controul the mode of carrying on any manufacture, trade, or business, or the management thereof; relative also to combinations to lower the rate of wages, or to increase or alter the hours or duration of the time of working, or to increase the quantity of work, or to regulate or controul the mode of carrying on any manufacture, trade, or business, or the management thereof; relative also to fixing the amount of the wages of labour; relative also to obliging workmen not hired to enter into work; together with every other act and enactment enforcing or extending the application of any of the acts or enactments repealed by this act, shall be and the same are hereby repealed, save and except in as far as the same may have repealed any prior act or enactment.”

Former laws re-  
pealed.

Sect. 2. And be it further enacted, “That journeymen, workmen, or other persons, who shall enter into any combination to obtain an advance, or to fix the rate of wages, or to lessen or alter the hours of duration of the time of working, or to decrease the quantity of work, or to induce another to depart from his service before the end of the time or term for which he is hired, or to quit or return his work before the same shall be finished, or not being hired, to refuse to enter into work or employment, or to regulate the mode of carrying on any manufacture, trade, or business, or the management thereof, shall not therefore be subject or liable to any indictment or prosecution for conspiracy, or to

Journeymen en-  
tering into com-  
binations shall  
not be liable to  
indictment for  
conspiracy.



" any other criminal information or punishment whatever, under the common or statute law."

Employers combining not liable to indictment.  
\* Sic.

Sect. 3. And be it further enacted, "That masters, employers, or other persons, who shall enter into any combination to lower or to fix the rate of wages, or to increase or alter the hours or duration of the time of working, or to increase the quantity of work, or to regulate the mode of carrying on any manufacture, trade, or business, or the management thereof, shall not therefore be subject or liable to any indictment or prosecution,\* or for conspiracy, or to any other criminal information or punishment whatever, under the common or the statute law," and then by sect 5, 6, 7. punishes by summary conviction before two magistrates, the forcing by violence any workman to leave his employ, or preventing any one not hired from accepting work or employment, or damnifying his tools, machinery, or work, or employing violence towards another for not complying with resolutions, &c. to alter the hours of working, or to obtain advance of wages, &c. with imprisonment with or without hard labour, for two months."

### *Slave Trade.*

(Vide p. 548.)

By the 5 Geo. 4. c. 113. All the acts relative to the slave trade are repealed. The act then declares that it shall not be lawful (except in certain excepted cases enumerated in the act, "To deal or trade in, purchase, sell, barter, contract for, or deal in slaves, or to import into any place persons to be dealt with as slaves, or to ship or tranship slaves for the purpose of exportation, or importation, or to fit out or man any vessel for that purpose, or to contract for the freighting or fitting out of any vessel for that purpose, or to make loans or guarantees for that purpose, or to ship goods for that purpose, or to serve on board any ship employed for that purpose, or to insure the slave adventurers," and by sect. 9. enacts, "That if any subject or subjects of his majesty, or any person or persons residing or being within any of the dominions, forts, settlements, factories, or territories, now or hereafter belonging to His Majesty, or being in His Majesty's occupation or possession, or under the government of the United Company of Merchants of England trading to the East Indies, shall, except in such cases as are in and by this act permitted, after the first day of January, one thousand eight hundred and twenty-five, upon the high-seas, or in any haven, river, creek, or place, where the admiral has jurisdiction, knowingly and wilfully carry away, convey, or remove, or aid or assist in carrying away, conveying or removing any person or persons as a slave or slaves, or for the purpose of his, her, or their being imported or brought as a slave or slaves into any island, colony, country, territory, or place whatsoever, or for the purpose

Dealing in slaves on the high-seas to be deemed piracy.

“ pose of his, her, or their being sold, transferred, used or dealt with  
 “ as a slave or slaves ; or shall, after the said first day of January,  
 “ one thousand eight hundred and twenty-five, except in such  
 “ cases as are in and by this act permitted, upon the high-seas,  
 “ or within the jurisdiction aforesaid, knowingly and wilfully ship,  
 “ embark, receive, detain, or confine, or assist in shipping, em-  
 “ barking, receiving, detaining, or confining, on board any ship,  
 “ vessel, or boat, any person or persons, for the purpose of his,  
 “ her, or their being carried away, conveyed, or removed as a slave  
 “ or slaves, or for the purpose of his, her, or their being im-  
 “ ported or brought as a slave or slaves into any island, colony,  
 “ country, territory, or place whatsoever, or for the purpose of  
 “ his, her, or their being sold, transferred, used or dealt with as a  
 “ slave or slaves, then and in every such case the person or per-  
 “ sons so offending shall be deemed and adjudged guilty of piracy,  
 “ felony, and robbery, and being convicted thereof shall suffer  
 “ death without benefit of clergy, and loss of lands, goods, and  
 “ chattels, as pirates, felons, and robbers upon the seas ought to  
 “ suffer.”

And by sect. 10. it is further enacted, “ That (except in such  
 “ special cases as are in and by this act permitted or otherwise  
 “ provided for) if any persons shall deal or trade in, purchase,  
 “ sell, barter, or transfer, or contract for the dealing or trading in,  
 “ purchase, sale, barter, or transfer of slaves, or persons intended  
 “ to be dealt with as slaves, or shall, otherwise than as aforesaid,  
 “ carry away or remove, or contract for the carrying away or re-  
 “ moving of slaves or other persons, as or in order to their being  
 “ dealt with as slaves ; or shall import or bring, or contract for  
 “ the importing or bringing, into any place whatsoever, slaves or  
 “ other persons, as or in order to their being dealt with as slaves ;  
 “ or shall, otherwise than as aforesaid, ship, tranship, embark,  
 “ receive, detain, or confine on board, or contract for the ship-  
 “ ping, transshipping, embarking, receiving, detaining, or confining  
 “ on board of any ship, vessel, or boat, slaves or other persons,  
 “ for the purpose of their being carried away or removed, as or  
 “ in order to their being dealt with as slaves ; or shall ship, tran-  
 “ ship, embark, receive, detain, or confine on board, or con-  
 “ tract for the shipping, transshipping, embarking, receiving,  
 “ detaining, or confining on board of any ship, vessel, or  
 “ boat, slaves or other persons, for the purpose of their being  
 “ imported or brought into any place whatsoever, as or in or-  
 “ der to their being dealt with as slaves ; or shall fit out, man,  
 “ navigate, equip, dispatch, use, employ, let or take to freight or  
 “ on hire, or contract for the fitting out, manning, navigating,  
 “ equipping, dispatching, using, employing, letting or taking to  
 “ freight or on hire, any ship, vessel, or boat, in order to accom-  
 “ plish any of the objects, or the contracts in relation to the ob-  
 “ jects, which objects and contracts have hereinbefore been de-  
 “ clared unlawful ; or shall knowingly and wilfully lend or ad-  
 “ vance, or become security for the loan or advance, or contract  
 “ for the lending or advancing, or becoming security for the loan  
 “ or advance of money, goods, or effects, employed or to be em-  
 “ ployed in accomplishing any of the objects, or the contracts in  
 “ relation

Persons dealing  
in slaves or ex-  
porting or im-  
porting slaves,

or shipping  
slaves in order  
to exportation  
or importation,

or fitting out  
slave ships,

or advancing  
capital in slave  
trade,

or guaranteeing  
slave adven-  
turers,

\* Sic.

or serving on  
board slave  
ships, as cap-  
tain, master,  
surgeon, &c.

or insuring slave  
adventurers.

or forging in-  
struments, de-  
clared felony.

" relation to the objects, which objects and contracts have here-  
" inbefore been declared unlawful; or shall knowingly and wil-  
" fully become guarantee or security, or contract for the becoming  
" guarantee or security for agents employed or to be employed  
" in accomplishing any of the objects, or the contracts in relation  
" to the objects, which objects and contracts have hereinbefore  
" been declared unlawful, or in any other manner to engage, or  
" to\* contract to engage, directly or indirectly therein, as a part-  
" ner, agent, or otherwise; or shall knowingly and wilfully ship,  
" tranship, lade, receive, or put on board, or contract for the  
" shipping, transshipping, lading, receiving, or putting on board  
" of any ship, vessel, or boat, money, goods, or effects, to be em-  
" ployed in accomplishing any of the objects, or the contracts in  
" relation to the objects, which objects and contracts have here-  
" inbefore been declared unlawful; or shall take the charge or  
" command, or navigate, or enter and embark on board, or con-  
" tract for the taking the charge or command, or for the navigating  
" or entering and embarking on board of any ship, vessel, or boat,  
" as captain, master, mate, surgeon, or supercargo, knowing that  
" such ship, vessel, or boat, is actually employed, or is in the  
" same voyage, or upon the same occasion, in respect of which  
" they shall so take the charge or command, or navigate or enter  
" and embark, or contract so to do as aforesaid, intended to be  
" employed in accomplishing any of the objects, or the contracts  
" in relation to the objects, which objects and contracts have here-  
" inbefore been declared unlawful; or shall knowingly and  
" wilfully insure, or contract for the insuring of any slaves, or any  
" property or other subject-matter engaged or employed in ac-  
" complishing any of the objects or the contracts in relation to  
" the objects, which objects and contracts have hereinbefore been  
" declared unlawful; or shall wilfully and fraudulently forge or  
" counterfeit any certificate, certificate of valuation, sentence or  
" decree of condemnation or restitution, copy of sentence or  
" decree of condemnation or restitution, or any receipt (such re-  
" cepts being required by this act), or any part of such certificate,  
" certificate of valuation, sentence or decree of condemnation or  
" restitution, copy of sentence or decree of condemnation or re-  
" stitution, or receipt as aforesaid; or shall knowingly and wil-  
" fully utter or publish the same, knowing it to be forged or  
" counterfeited, with intent to defraud his majesty, his heirs, or  
" successors, or any other person or persons whatsoever, or any  
" body politic or corporate; then and in every such case the per-  
" son or persons so offending, and their procurers, counsellors,  
" aiders, and abettors, shall be and are hereby declared to be  
" felons, and shall be transported beyond seas for a term not ex-  
" ceeding fourteen years, or shall be confined and kept to hard la-  
" bour for a term not exceeding five years, nor less than three  
" years, at the discretion of the court before whom such offender  
" or offenders shall be tried and convicted."

And be it further enacted, " That (except in such special cases  
" or for such special purposes as are in and by this act expressly  
" permitted) if any person shall enter and embark on board, or  
" contract for the entering and embarking on board of any ship,  
" vessel,

## ADDENDA ET CORRIGENDA.

‘ vessel, or boat, as petty officer, seaman, marine, or servant, or in any other capacity not hereinbefore specifically mentioned, knowing that such ship, vessel, or boat, is actually employed, or is in the same voyage, or upon the same occasion, in respect of which they shall so enter and embark on board, or contract so to do as aforesaid, intended to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful; then and in every such case the persons so offending, and their procurers, counsellors, aiders, and abettors, shall be and they are hereby declared to be guilty of a misdemeanor only, and shall be punished by imprisonment for a term not exceeding two years.”

Seamen serving on board slave ships guilty of a misdemeanor.

Punishment.

### *Aliens.*

(Offences against Public Economy, c. 34.)

By 5 Geo. 4. c. 37. The alien act is continued for two years. The act continued is the 56 Geo. 3. c. 86. “ By which aliens arriving in the kingdom are directed immediately to deliver to the inspector of aliens, or officer of the customs, their name, rank, occupation, or description, or if a domestic servant, the name, rank, and description of their master or mistress, and the country or place from whence he or she shall have come, and the place to which he or she is then going, and the name and place of abode of the person (if any) to whom he or she is known; and every alien who shall come into this realm, who shall neglect to make declaration of the aforesaid particulars, or who shall wilfully make any false declaration thereof, may, for every such offence, on conviction thereof in his majesty’s court of king’s bench, at Westminster, or in Dublin, &c. be imprisoned for any time not exceeding three months, or may at the discretion of such court be adjudged to depart out of this realm, and all other his majesty’s dominions, within a time to be limited in such judgement, and if he or she shall be found therein after such time in such judgement so limited, without lawful cause, he or she shall, being duly convicted thereof, be imprisoned for any term not exceeding twelve months.” By the same act aliens not departing the kingdom upon proclamation or order, may be committed to gaol until sent out of the realm, agreeable to the provisions of that act. And by sect. 2. “ Every alien neglecting or refusing to pay due obedience to any such proclamation or order, or being found in this realm or any part thereof, contrary to such proclamation or order, and who shall be lawfully convicted thereof, in his majesty’s courts of king’s bench in Westminster or in Dublin, may at the discretion of such courts respectively be adjudged to suffer imprisonment for any term not exceeding one month for the first offence, and not exceeding twelve months for the second or any subsequent offence.

*Transportation of Convicts.*

(Vide vol. 2. 507.)

The statute of 56 Geo. 3. c. 27. (vide vol. 2. p. 514.) was continued until the end of the last session of parliament, and then expired. By stat. 5 Geo. 4. c. 84. so much of the 4 Geo. 1. (vide vol. 2. p. 508.) as relates to contracts and security for the transportation of felons and to the punishment of those who return from transportation, and so much of 6 Geo. 1. as relates to the same object, are repealed, with the several other acts recited respecting the regulations of convicts and transports. The statute also recites that it is expedient that the laws relative to the subject of transportation of offenders should be revised and consolidated into one act. It then regulates the manner of transporting offenders, and by s. 22. enacts, "That if any offender who shall  
 " have been or shall be so sentenced or ordered to be transported  
 " or banished, or who shall have agreed or shall agree to transport  
 " or banish himself or herself on certain conditions, either for life  
 " or any number of years under the provisions of this or any former act, shall be afterwards at large within any part of his majesty's dominions, without some lawful cause, before the expiration of the term for which such offender shall have been  
 " sentenced or ordered to be transported or banished, or shall  
 " have so agreed to transport or banish himself or herself, every  
 " such offender so being at large, being thereof lawfully convicted, shall suffer death as in cases of felony, without the benefit of clergy; and such offender may be tried either in the  
 " county or place where he or she shall be apprehended, or in  
 " that from whence he or she was ordered to be transported or  
 " banished; and if any person shall rescue or attempt to rescue,  
 " or assist in rescuing or attempting to rescue, any such offender  
 " from the custody of such superintendent or overseer, or of any  
 " sheriff or gaoler or other person conveying, removing, transporting, or reconveying him or her, or shall convey or cause to  
 " be conveyed any disguise, instrument for effecting escape, or  
 " arms to such offender, every such offence shall be punishable  
 " in the same manner as if such offender had been confined in a  
 " gaol or prison in the custody of the sheriff or gaoler, for the  
 " crime of which such offender shall have been convicted; and  
 " whoever shall discover and prosecute to conviction any such  
 " offender so being at large within this kingdom, shall be entitled  
 " to a reward of twenty pounds for every such offender so convicted."

And by sect. 23. "That in any indictment against any offender for being found at large contrary to the provisions of  
 " this or of any other act now made or hereafter to be made, and  
 " also in any indictment against any person who shall rescue, or  
 " attempt to rescue, or assist in rescuing any such offender from  
 " such custody, or who shall convey or cause to be conveyed any  
 " disguise, instrument for effecting escape, or arms, to any such  
 " offender, contrary to the provisions of this or of any other act  
 " now

“now made or hereafter to be made, whether such offender shall have been tried before any court or judge within or without the united kingdom, or before any naval or military court-martial, it shall be sufficient to charge and allege the order made for the transportation or banishment of such offender, without charging or alleging any indictment, trial, conviction, judgment, or sentence, or any pardon or intention of mercy or signification thereof, of or against or in any manner relating to such offender.”

Sect. 24. “That the clerk of the court or other officer having the custody of the records of the court where such sentence or order of transportation or banishment shall have been passed or made, shall, at the request of any person on his majesty’s behalf, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, and of the sentence or order for his or her transportation or banishment (not taking for the same more than six shillings and eight-pence), which certificate shall be sufficient evidence of the conviction and sentence, or order for the transportation or banishment of such offender; and every such certificate, if made by the clerk or officer of any court in Great Britain, shall be received in evidence, upon proof of the signature and official character of the person signing the same; and every such certificate, if made by the clerk or officer of any court out of Great Britain, shall be received in evidence if verified by the seal of the court or by the signature of the judge or one of the judges of the court, without further proof.”

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The following clauses have been omitted to be arranged under their proper heads.

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*Bank of England Plates and Notes.*

(Forgery. Vide p. 280.)

By the 1st of Geo. 4. c. 92. reciting that, Whereas the forgery of Bank notes hath of late very much increased in this kingdom; and as well for the prevention thereof, as to facilitate the detection of the same, the Governor and Company of the Bank of England have, after great consideration, labour and expense, formed a new plan for printing Bank notes, in which the ground-work of each Bank note will be black or coloured, or black and coloured line-work, and the words “Bank of England” will be placed at the top of each Bank note in white letters upon a black, sable or dark ground, such ground containing white lines intersecting each other, and the numerical amount or sum of each Bank note in the body of the note will be printed in black and register work, and the back of each note will distinctly show the whole contents thereof, except the number and date, in a reversed impression;—

Therefore

Therefore, for the better prevention of the forgery of Bank notes, and for the security of the public, it is enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, " That from and after the passing of this act, if any person or " persons (other than the officers, workmen, servants and agents " for the time being of the said Governor and Company, to be " authorised and appointed for that purpose by the said Governor and Company, and for the use of the said Governor and " Company only) shall engrave, cut, etch, scrape, or by any other " art, means or device make, or shall cause or procure to be engraved, cut, etched, scraped, or by any other art, means or " device made, or shall knowingly aid or assist in the engraving, " cutting, etching, scraping, or by any other art, means or device, " making, in or upon any plate of copper, brass, steel, iron, pewter, or of any other metal or mixtures of metal, or upon wood " or other materials, or any plate whatsoever, for the purpose of " producing a print or impression of all or any part or parts of a " Bank note, or of a blank Bank note, of the said Governor and " Company, of the description aforesaid, without an authority in " writing from the said Governor and Company, or shall use any " such plate so engraved, cut, etched, scraped, or by any other " art, means or device made, or shall use any other instrument " or contrivance for the making or printing any such Bank note " or blank bank note, or part of a Bank note of the description " aforesaid ; or if any person or persons shall, from and after the " passing of this act, without such authority as aforesaid, knowingly, and without lawful excuse have in his, her or their custody any such plate or instrument, or without such authority " as aforesaid shall knowingly or wilfully utter, publish, dispose " of or put away any such blank Bank note, or part of such " Bank note of the description aforesaid, every person so offending in any of the cases aforesaid, and being thereof convicted " according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

Vide p. 278.

" And whereas divers frauds have been practised by making " and publishing papers with certain words and characters so " nearly resembling the notes of the Governor and Company of " the Bank of England, as to appear, to ignorant and unwary " persons, to be the notes of the said Governor and Company ; " and it is necessary for the security of the public, that such " practices, as applied to the notes of the said Governor and " Company of the description aforesaid, should be prevented ;— " Be it therefore further enacted, That if any person or persons, " from and after the passing of this act, shall engrave, cut, etch, " scrape, or by any other art, means or device make, or shall " cause or procure to be engraved, cut, etched, scraped, or by " any other art, means or contrivance made, or shall knowingly " aid or assist in the engraving, cutting, etching, scraping, or by " any art, means or contrivance making, in or upon any plate of " copper, brass, steel, iron, pewter, or of any other metal or " mixture of metals, or upon wood or any other materials, or " upon any plate whatsoever, any line-work, as or for the ground-work

“work of a promissory note or bill of exchange, the impression  
 “taken from which line-work shall be intended to resemble the  
 “ground-work of a Bank note of the said Governor and Com-  
 “pany of the description aforesaid, or any device the impression  
 “taken from which shall contain the words ‘ Bank of England’  
 “in white letters upon a black, sable or dark ground, either with  
 “or without white or other lines therein, or shall contain in any  
 “part thereof the numerical sum or amount of any promissory  
 “note or bill of exchange in black and red register work, or shall  
 “show the reversed contents of a promissory note or bill of ex-  
 “change, or of any part of a promissory note or bill of exchange,  
 “or shall contain any word or words, figure or figures, charac-  
 “ter or characters, pattern or patterns, which shall be intended  
 “to resemble the whole or any part of the matter or ornaments  
 “of any Bank note of the description aforesaid, or shall contain  
 “any word, number, figure or character in white on a black,  
 “sable or dark ground, either with or without white or other  
 “lines therein, which shall be intended to resemble the numeri-  
 “cal sum or amount in the margin, or any other part of any  
 “Bank note of the said Governor and Company, without an  
 “authority in writing for that purpose from the said Governor  
 “and Company, to be produced and proved by the party ac-  
 “cused; or if any person or persons shall from and after the  
 “passing of this act, (without such authority as aforesaid), use  
 “any such plate, wood or other material so engraved, cut, etched,  
 “scraped, or by any other art, means or contrivance made, or  
 “shall use any other instrument or contrivance for the making  
 “or printing upon any paper or other material, any word or  
 “words, figure or figures, character or characters, pattern or  
 “patterns, which shall be intended to resemble the whole or any  
 “part of the matter or ornaments of any such note of the said  
 “Governor and Company, of the description aforesaid, or any  
 “word, figure, or character, in white on a black, sable or dark  
 “ground, either with or without white or other lines therein,  
 “which shall be apparently intended to resemble the numerical  
 “sum or amount in the margin, or any other part of any Bank  
 “note of the said Governor and Company; or if any person or  
 “persons shall from and after the passing of this act, without  
 “such authority as aforesaid, knowingly have in his, her or their  
 “custody or possession any such plate or instrument; or shall  
 “knowingly and wilfully utter, publish or dispose of, or put  
 “away any paper or other material containing any such word or  
 “words, figure or figures, character or characters, pattern or  
 “patterns as aforesaid, or shall knowingly or willingly have in  
 “his, her, or their custody or possession any paper or other  
 “material containing any such word or words, figure or figures,  
 “character or characters, pattern or patterns as aforesaid, (with-  
 “out lawful excuse, the proof whereof shall lie upon the person  
 “accused), every person so offending in any of the cases afore-  
 “said, and being convicted thereof according to law, shall be  
 “adjudged a felon, and shall be transported for the term of  
 “fourteen years.”

It does not appear that the Bank ever issued any notes such  
 as described by the above act; and with respect to engraving  
 platcs



plates to resemble their notes, it was before provided for by stat. 41 Geo. 3. c. 39. (vide vol. i. p. 278) and by stat. 52 Geo. 3. c. 138. (vol. i. p. 280.)

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*Receiving or having Possession of Forged Bank Notes.*

(Receiving Choses in Action. Vide p. 236.)

By 45 Geo. 3. c. 8. s. 6. it is enacted, " If any person or persons shall, from and after the passing of this act, purchase or receive from any other person or persons any forged or counterfeited Bank note, Bank bill of exchange, Bank post bill, or blank Bank note, blank Bank bill of exchange, or blank Bank post bill, knowing the same to be forged or counterfeited, or shall knowingly or willingly have in his, her, or their possession or custody, or in his, her, or their dwelling house, outhouse, lodgings or apartments, any forged or counterfeited Bank note, Bank bill of exchange, or Bank post bill, or blank Bank note, blank Bank bill of exchange, or blank Bank post bill, knowing the same to be forged or counterfeited (without lawful excuse, the proof whereof shall lie upon the person accused,) every person or persons so offending, and being thereof convicted according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years."

This clause is verbatim the same as the one set out, vol. i. p. 279. from the 41 Geo. 3. c. 39. It therefore had no other operation but to add to the mass of confusion arising from the statutes upon forgery, more particularly those relative to Bank forgeries.

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*Furious Driving of Stage Coaches.*

(Offences against Public Economy, c. 32.)

The 1 Geo. 4. c. 4. reciting the 50 Geo. 3. c. 48. regulating the number of passengers to be carried outside stage coaches, and that it was expedient to extend the provisions of the said act, and that it was expedient to punish criminally coachmen, &c. for accidents occasioned by their wilful negligence or misconduct, enacts, " That if any person shall be maimed or otherwise injured by reason of the wanton and furious driving or racing, or by the wilful misconduct of any coachman, or other person having the charge of any stage coach or public carriage, such wanton and furious driving or racing or wilful misconduct of such coachman or other person, shall be and the same is hereby declared to be a misdemeanour, and punishable as such by fine and imprisonment."—But the act is not to extend to hackney coaches.

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*Seducing Persons Serving in His Majesty's Forces.*

(Offences against the King, p. 49.)

The statute 37 Geo. 3. ch. 70. intitled, " An act for the better prevention and punishment of attempts to seduce persons  
" serving

“serving in his Majesty’s forces by sea or land, from their duty and allegiance to his Majesty, or to incite them to mutiny or disobedience,” recites, “That divers wicked and evil-disposed persons, by the publication of written or printed papers, and by malicious and advised speaking, have of late industriously endeavoured to seduce persons serving in his Majesty’s forces by sea and land from their duty and allegiance to his Majesty, and to incite them to mutiny and disobedience; and then enacts, “That from and after the passing of this act, any person who, shall maliciously and advisedly endeavour to seduce any person or persons serving in his Majesty’s forces by sea or land from his duty and allegiance to his Majesty, or to incite or stir up any such person or persons to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traiterous or mutinous practice whatsoever, shall, on being legally convicted of such offence, be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy. (Made perpetual by 57 Geo. 3. c. 7.)

In an indictment upon this statute, for “endeavouring” to seduce a soldier from his duty, it was held by the judges that it was sufficient to state the endeavour without stating the means employed. 1 P. and B. 180. (in Cam. S.)

### *Military Training,*

(Offences against the King.)

Which may be considered as an offence against the king, he having the sole direction of the military forces. By 60 Geo. 3. c. 1. s. 1. after reciting that, “Whereas, in some parts of the united kingdom, men clandestinely and unlawfully assembled have practised military training and exercise, to the great terror and alarm of his Majesty’s peaceable and loyal subjects, and the imminent danger of the public peace;” it is enacted, “That all meetings and assemblies of persons for the purpose of training or drilling themselves, or of being trained or drilled to the use of arms, or for the purpose of practising military exercise, movements, or evolutions, without any lawful authority from his Majesty, or the lieutenant, or two justices of the peace of any county or riding, or of any stewardry, by commission or otherwise, for so doing, shall be and the same are hereby prohibited, as dangerous to the peace and security of his Majesty’s liege subjects and of his government; and every person who shall be present at or attend any such meeting or assembly, for the purpose of training and drilling any other person or persons to the use of arms, or the practice of military exercise, movements, or evolutions, or who shall train or drill any other person or persons to the use of arms, or the practice of military exercise, movements, or evolutions, or who shall aid or assist therein, being legally convicted thereof, shall be liable to be transported for any term not exceeding seven years, or to be punished by imprisonment not exceeding two years, at the discretion

“creation of the court in which such conviction shall be had;  
 “and every person who shall attend or be present at any such  
 “meeting or assembly as aforesaid, for the purpose of being,  
 “or who shall at any such meeting or assembly be trained or  
 “drilled, to the use of arms, or the practice of military exercise,  
 “movements, or evolutions, being legally convicted thereof, shall  
 “be liable to be punished by fine and imprisonment not ex-  
 “ceeding two years, at the discretion of the court in which such  
 “conviction shall be had.”

Justices of the peace are authorized to disperse any such meetings, and to arrest any persons present, and to commit or take bail of them to answer for the offence.

### *Administering Poison to procure Abortion.*

(Offences against the Persons of Women, c. 16.)

Administering  
poison to women  
quick with child  
to procure abor-  
tion.

The statute 43 Geo. 3. c. 58. enacts, “That if any person or  
 “persons from and after 1st July, 1803, shall either in England  
 “or Ireland, wilfully, maliciously, and unlawfully administer to  
 “or cause to be administered to or taken by any of his Majesty’s  
 “subjects, any deadly poison, or other noxious and destructive  
 “substance or thing, with intent such his Majesty’s subject or  
 “subjects thereby to murder, (1) or thereby to cause or procure  
 “the miscarriage of any woman then being quick with child,  
 “that then and in every such case the person or persons so of-  
 “fending, their counsellors, aiders, and abettors, knowing of and  
 “privy to such offence, shall be and are hereby declared to be  
 “felons, and shall suffer death as in cases of felony, without  
 “benefit of clergy.”

Administering  
poison to a wo-  
man not quick  
with child with  
like intent.

By s. 2. it is recited, that “Whereas it may sometimes happen  
 that poison, or some other noxious and destructive substance or  
 thing may be given, or other means used, with intent to procure  
 miscarriage or abortion where the woman may not be quick with  
 child at the time, or it may not be proved that she was quick  
 with child,” and enacted, “That if any person or persons, from  
 “and after 1st July, 1803, shall wilfully and maliciously admi-  
 “nister to, or cause to be administered to or taken by any wo-  
 “man, any medicines, drug, or other substance or thing whatso-  
 “ever, or shall use or employ, or cause or procure to be used or  
 “employed, any instrument or other means whatsoever, with  
 “intent thereby to cause or procure the miscarriage of any  
 “woman not being, or not being proved to be quick with child  
 “at the time of administering such things or using such means,  
 “that then and in every such case the person or persons so of-  
 “fending, their counsellors, aiders and abettors, knowing of and  
 “privy to such offence, shall be and are hereby declared to be  
 “guilty of felony, and shall be liable to be fined, imprisoned, set  
 “in and upon the pillory (2), publicly or privately, or to suffer

(1) See Assaults with Intent to Murder, p. 112.

(2) Abolished by 56 Geo. 3. c. 138.

“ one or more of the said punishments, or to be transported  
 “ beyond the seas for any term not exceeding fourteen years, at  
 “ the discretion of the court before which such offender shall be  
 “ tried and convicted.”

*Preventing Free Passage of Grain, &c.*

(Malicious Mischief, c. 24.)

The following clauses are in substance, and nearly verbatim, the same as those in 11 Geo. 2. c. 22. set out (p. 345); but as the former statute is not repealed, they ought both to have been there set out.

The statute 36 Geo. 3. c. 9. intituled, “ An act to prevent obstructions to the free passage of grain within the kingdom,” recites, “ That divers persons have assembled themselves in great numbers, and committed great violences, with intent to hinder the passage of corn and grain from place to place, whereby the necessary circulation of corn and grain within the kingdom may be prevented;” and then enacts, “ That if any person or persons shall from and after the passing of this act wilfully and maliciously beat, wound, or use any other violence to or upon any person or persons, with intent to deter or hinder him or them from buying of corn or grain in any market, or other place within this kingdom, or shall unlawfully stop or seize any wheat, flour, meal, malt, or other grain, in or on the way to or from any city, market town, or place in this kingdom, or shall wilfully and maliciously break, cut, or destroy any waggon, cart, or other carriage, wherein any such wheat, flour, meal, malt, or other grain, shall be loaded, or the harness of any horse or horses, drawing or carrying the same, or shall unlawfully take off from any such carriage, or drive away, kill, or wound any such horse or horses, or unlawfully beat or wound the driver or drivers of any such waggon, cart, or other carriage, or horse, so loaded, with intent to stop such wheat, flour, meal, malt, or other grain, or shall, by cutting of the sacks, or otherwise, scatter or throw abroad any such wheat, flour, meal, malt, or other grain, or shall take or carry away, destroy, spoil, or damage the same, or any part thereof, every and all such person or persons, being thereof lawfully convicted before any two or more justices of the peace of the county, shire, stewartry, riding, division, town, or place corporate, wherein such offence or offences shall be committed, or before the justices of the peace in open sessions (who are hereby authorized and empowered summarily and finally to hear and determine the same), shall be sent to the common gaol or house of correction, there to continue and be kept to hard labour for any time not exceeding the space of three months, nor less than one month.” sect. 1.

Using violence to any person to deter him from bringing grain;

or stopping grain, &c. in its passage;

or breaking or cutting, &c. carriage or harness of horses conveying it; or taking off from carriage or injuring, &c. horses; or beating drive; &c. with intent to stop such grain; or cutting sacks, otherwise scattering such grain;

imprisonment on summary conviction before justices of peace.

“ If any such person or persons so convicted shall commit any  
 “ of the offences aforesaid a second time, or if, from and after  
 “ the passing of this act, any person or persons, with intent to  
 “ prevent or hinder any corn, meal, flour, malt, or grain, from  
 “ being

Second offence felony.

Destroying granary, &c. or taking, grain, &c. therefrom; or spoiling the same, felony.

" being lawfully carried or removed from any place whatsoever,  
 " shall wilfully and maliciously pull, throw down, or otherwise  
 " destroy any storehouse or granary, or other place in which  
 " corn, meal, flour, malt, or grain, shall be then kept (1), or shall  
 " unlawfully enter any such storehouse, granary, or other place,  
 " and take and carry away any corn, flour, meal, malt, or grain  
 " therefrom, or shall throw abroad or spoil the same, or any part  
 " thereof, or shall unlawfully enter on board any ship, barge,  
 " boat, or vessel, and wilfully and maliciously take and carry  
 " away, cast and throw out therefrom, or otherwise spoil or  
 " damage any corn, flour, meal, malt, or grain therein, every per-  
 " son so offending, and being thereof lawfully convicted, shall be  
 " adjudged guilty of felony, and shall be transported for the  
 " space of seven years, in like manner as other felons are di-  
 " rected to be transported by the laws and statutes of this realm;  
 " and if any such offender, so transported, shall return into this  
 " kingdom before the expiration of the said seven years, he or  
 " she shall suffer death as a felon, without benefit of clergy."

(1) The words "*in order to be exported*" here occur in the act of 11 Geo. 2. c. 22. The recital of that act also states, that great violences had been committed with intent to hinder the exportation of corn: the preamble of the 36 Geo. 2. states, that many had assembled themselves in great numbers, and committed great violences with intent to hinder the passage of corn and grain from place to place. The variations in the enactments of these two statutes are intended to meet the respective mischiefs.

Page 124.—Dele *Sect. 3.* the clause of 39 Eliz. c. 9. which takes away clergy from those who forcibly marry women against the provisions of 3 H. 7. c. 2.—that clause being repealed by 1 Geo. 4. c. 115.

Page 206. line 9, from the bottom.—Insert the word "no," viz. instead of "that it is part," read. "that it is *no* part."

Page 284.—Add Note, that "Clergy is restored to the offence of taking reward to restore stolen goods by 1 Geo. 4. c. 115."

#### ERRATA.—VOL. I.

Page 153, line 14, for "*of*," read "*by*."

Page 279, line 21, after the words "Bank note," instead of "*and*," read "*&c.*"

Page 339, line 24, after "without benefit of clergy," add note of reference to vol. ii. p. 633. title "Judgment," where clergy is restored by 1 Geo. 4. c. 115.

Page 338, line 13, after the words "so offending," add "their aiders and abettors."

A  
TREATISE  
OF



THE PLEAS OF THE CROWN.

BOOK I.

CHAP. I.

OF THE PERSONS WHO MAY BE GUILTY.(1)

THE guilt of offending against any law whatsoever, necessarily supposing a wilful disobedience, can never justly be imputed to those who are either incapable of understanding it, or of conforming themselves to it. Therefore, before I come to the several kinds of offences, I shall shew what degrees of discretion and freedom are required in the commission of them. For the better understanding whereof, I shall consider what offenders are excusable.—FIRST, in respect of their want of reason.—SECONDLY, in respect of their subjection to the power of others.

*Sect. 1.* As to THE FIRST POINT, it is to be observed, that those who are under a natural disability of distinguishing between good and bad, are not to be held guilty of any offence. 1 Hale, 15. 4 Comm. 21. Puff. b. 8. c. 3. B. Cor. 61. 170. Pult. 125, 126. Sum. 10. 28. 43. 3 Inst. 4.

Dalt. c. 147. 1 Hale, 16. 29. 515. Co. Lit. 247. 4 Co. 124. Hob. 224. 8 St. Tr. 322.

(1) Legal guilt is a violation of positive law; a crime or misdemeanor may, therefore, be defined the "wilful" commission or omission of any acts in violation of a public law either forbidding or commanding it. This definition comprehends both crimes and misdemeanors, which are synonymous terms, though in common usage the word "crimes" is made to denote offences of a deeper and more atrocious dye, while smaller faults and omissions of less consequence are comprised under the gentler name of "misdemeanors." (Bl. Com. lib. 4. c. 1.) But the act done or omitted, in order to be criminal must be wilful. The consent of the will is that which renders human actions either com-

mendable or culpable, and where there is no will to commit an offence there can be no transgression, saith Sir M. Hale (H. P. C. c. 2.) That learned judge then goes on to state those causes which the law of England notices as excusing the fact from incapacity or defect of will, which he classes as follows:—1. Natural. 2. Accidental. 3. Civil Incapacities or Defects.—The natural is that of infancy.—The accidental defects of will—1. *Dementia*. 2. Casualty or Chance. 3. Ignorance. The civil defects or want of will—1. Civil Subjection. 2. Compulsion. 3. Necessity. 4. Fear.

good and evil, as (2) infants under the age of discretion, idiots, and lunatics (3), are not punishable by any criminal prosecution whatsoever.

### Sect.

(2) Infancy, as is above observed, is a defect of the will or understanding. Infants under the age of discretion ought not to be punished by any criminal prosecution. What the age of discretion is, is matter of variety in different nations. (Bl. Com. b. 4. c. 2.)

By the civil law, the age is distributed into several periods for several purposes. The complete full age as to matters of contract is twenty-five years. (Inst. lib. 1. tit. 23. Dig. lib. 4. tit. 4.) But according to the law of England, twenty-one years. (Co. L. 103. Lit. sect. 104.)

As to matters of crimes and criminal punishment, especially that of death, the civil law distinguishes the age of minors into three periods—*INFANTIA*, from the birth until seven years of age; *PUERTIA*, from seven to fourteen years of age; and *PUBERTAS*, from fourteen years and upwards. Indeed *pubertas plena* is eighteen years. (Dig. lib. 1. tit. 7. de Adoptionibus, c. 40. sect. 1. Inst. cod. tit. sect. 4.) The period of *puertia* is again sub-divided into two equal parts. From seven years to ten and a half is *etate infantie proxima*. From ten years and a half until fourteen is *etate pubertati proxima*. Fourteen years is the age of *pubertas* in relation to crimes and punishments. With respect to the first age, *infantia* or infancy, which lasts to the period of seven years within that age and the next period of *etate infantie proxima*, that is, to ten years and a half, there could be no guilt of a capital offence, and therefore the infant could not be punished, infants of that age being considered *doli incapaces*. (Dig. lib. 47. tit. 12. de Sepulchro violato, lib. 3. sect. 1.) The next period of *puertia* was from ten years and a half until fourteen, being the age *pubertati proxima*. Within this period the infant was *prima facie* considered *doli capax*, and so might be punished for a capital offence, but with a power in the judge to mitigate the rigor of the sentence on account of the youth of the offender. (Dig. lib. 4. tit. 4. de Minoribus, c. 37. Sec. 1. in Delictis.) Fourteen years was full age as to responsibility in relation to crimes and punishment. (Dig. lib. 29. tit. 5. de Senatus-Consulto Silianiano, sect. 32.)

Thus far as to the civil law. By the law of England an infant under seven years of age cannot be guilty of felony, whatever circumstances of discretion may appear: for, *ex presumptione juris*, he cannot have discretion, and no averment shall be received against that presumption; and in matter of crime there is no difference as to the age of male or female, though for certain civil purposes there is a distinction adopted between the ages of the different sexes. (H. H. P. C. c. 3.) With respect to the whole of the next period, from seven to fourteen years of age, the law of England presumes in favour of the infant that he is *doli incapax*, but this presumption may be rebutted by evidence; and if it shall appear that the infant was *doli capax*, he may be convicted of a capital crime and executed. And our law books have preserved several instances where children of the ages of ten,

eleven, and twelve, have been convicted and executed. (Fost. 72. Bl. Com. b. 4. c. 2. H. H. P. C. c. 3. p. 26.) At the completion of fourteen years of age, infants are fully responsible for any felonious act, being then presumed to have arrived at the age of discretion. (Co. L. 247.)

In certain cases of misdemeanor, however, the law privileges a minor under twenty-one years of age from punishment, but these in general are cases of *non feausance*, because in such case *laches* shall not be imputed to him, (Bro. Sauger default. 50. Cro. Ja. 465, 466. Co. L. 246. b.) as non repair of a bridge, &c. (Bl. Com. 4. c. 2.)

(3) Idiots, lunatics during their lunacy, and madmen, are all incapable of committing crime, as falling within that accidental defect of the will included by Lord Hale under the term *dementia*, or insanity. An idiot is one of defective understanding from his birth. He is thus described by Fitz Herbert. (N. B. 532.) "He who shall be said to be a sot and idiot from his birth is such a person who cannot account or number twenty pence, nor can tell who was his father or mother, nor how old he is, &c. so as it may appear he hath no understanding of reason what shall be for his profit, or what for his loss. But if he have such understanding that he know and understand his letters, and do read by teaching of another man, then it seems he is not a sot or natural idiot." But, as Lord Hale observes, these may be too narrow grounds though they be evidence, and the question is one of fact, triable by a jury and sometimes by inspection. (H. P. C. c. 4.)

A lunatic is one who has lucid intervals, and is only occasionally insane. Madness is fixed and permanent disease of mind, causing continual insanity. If a person commit a crime while under the deprivation or reason, he is not criminally responsible; and if it shall appear to the jury that the accused was labouring under insanity at the time the fact was committed, they ought to pronounce a verdict of not guilty; but inasmuch as it is dangerous to the public that insane persons, who have shewn a mischievous disposition, should be suffered to go at large, it is enacted by the 17 G. 2. c. 5. that dangerous lunatics, who are vagrants, are to be imprisoned and sent to their proper homes. But this act only applied to the cases of vagrants, and therefore, by a subsequent statute, (39 & 40 G. 3. c. 94.) it is enacted, sect. 1. "that in all cases where it shall be given in evidence upon the trial of any person charged with treason, murder, or felony, that such person was insane at the time of committing such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of committing such offence, the court, before whom such trial shall be had, shall order such person to be kept in strict custody, in such place and in such manner

*Sect. 2.* Indeed it was anciently holden, in respect of that high regard which the law has for the safety of the king's person, that a madman might be punished as a traitor (4) for killing or offering to kill the king; but this is contradicted by the later opinions.

2 Roll. 324. F. Cor. 351. Reg. 309. Sum. 43. 3 Inst. 6. Co. Lit. 247. 4 Co. 124. 4 Comm. 25.

*Sect. 3.* And it seems agreed at this day, that if one who has committed a capital offence become *non-compos* before conviction, he shall not be arraigned; and if after conviction, that he shall not be executed.

26 Ass. 27. Sav. 57. Sum. 10. 1 And. 107. 109. 3 Inst. 4. 6. 1 Hale, 34, 35. 4 St. Tr. 205. 8 St. Tr. 285. 4 Comm. 24, 25. 395.

*Sect. 4.* And, by the common law, if it be doubtful whether a criminal who at his trial is in appearance a lunatic, be such in truth or not, it shall be tried by an inquest of office, to be returned by the sheriff of the county wherein the court sits; (5) and if it be found by them that the party only feign himself mad, and he still refuse to answer, he shall be dealt with as one that stands *mute*. (6)

1 And. 107. 1 Sav. 50. 56. 1 Hale, 35.

*Sect. 5.* And if one who wants discretion commit a trespass against the person or possession of another, he shall be compelled in a civil action to give satisfaction for the damage.

2 R. Abr. 547. B. Cor. 6. Hob. 134. Co. Lit. 247.

289. Plow. 361. 2 Inst. 281. 414. Pop. 111. Brownl. 197. Noy, 129. C. Jac. 467. 1 Hale, 15, 16. 20. 3 Bac. Ab. 131. 2 Comm. 291. 4 Comm. 22.

*Sect. 6.* And he who is guilty of any crime whatever through his voluntary drunkenness, shall be punished for it as much as if he had been sober.

Co. Litt. 247. 1 Hale, 32. Plow. 19. 4 Co. 125.

Dalt. c. 143. 4 Comm. 26. 8 St. Tr. 285.

### *Sect.*

manner as to the court shall seem fit, until his Majesty's pleasure shall be known. And it shall be thereupon lawful for his Majesty to give such order for the safe custody of such person during his pleasure, in such place and in such manner as to his Majesty shall seem fit." And by sect. 2. of the same act, where an insane person is indicted, and cannot be tried on account of his insanity, and his insanity is found by a jury impanelled for that purpose, he is to be dealt with in like manner.

The next accidental defect of the will, as stated by Lord Hale, though not noticed here by Mr. Serj. Hawkins, is casualty or chance; that is, where a party has committed an act which he did not intend to have done. If any accidental mischief happens in the prosecution of a lawful act, the party not intending the thing that happened, stands excused. But if a man be doing that which is *unlawful*, and a consequence follows which he did not intend or foresee, his want of foresight shall be no excuse. (B. Com. v. 4. c. 2.) But in order to make a party guilty of *felony*, under these circumstances, it should seem that his original intention should be a *felonious* intention. Where a party intending to commit one felonious act unintentionally commits another felonious act, he is clearly guilty of felony; but where the original intention was only to commit a trespass, as where a man un-

lawfully using a hand gun unintentionally sets fire to a barn full of corn, (which is felony if wilfully done,) he shall not be guilty of felony, though his act in using the gun was *unlawful*. This at least is the opinion of Sir M. Hale (II. P. C. vol. i. p. 569.) contrary to some older authorities. (Dalton.)

The opinion of Hale seems most consonant to reason and justice, and accords with the maxim of Lord Bacon—"In criminalibus sufficit generatus culpa intentionis cum facto parvis gradus." (Regula 15.)

(4) Sec 33 H. 8. c. 20, repealed by 1 & 2 P. & M. c. 20. 2 State Trials, 7.

(5) It may be tried either by the inspection of the court, 1 Hale. 33. Tr. p. Pais, 14. Fitz. N. B. 517.—by evidence given to the jury, who are charged to try the indictment, 3 Bac. Abr. 81. 1 Hale, 33, 35, 36. Savil, 50. 1 And. 107.—or, being a collateral issue, the fact may be pleaded and replied to *ore tenus*, and a *verdict* awarded, returnable *instanter*, in the nature of an inquest of office. Post. 46. Kel. 13. 1 Lev. 61. 1 Sid. 72. 4 Comm. Appen. s. 3. And this method, in cases of importance, doubt, or difficulty, the court will, in prudence and discretion, adopt. 1 Hale, 35. Sav. 56. 1 And. 134.

(6) For the consequences of *standing mute*, see Bk. II. c. 13. s. 9.



Kely. 53.  
Dalt. p. 533.  
1 Hale, 617.

**Sect. 7.** Also he who incites a madman to do a murder or other crime, is a principal offender, and as much punishable as if he had done it himself.

F. Cor. 118.  
129.  
12 Ass. 30.  
B. Cor. 6. 61.  
133. 136.  
S. P. C. 16.  
35 H. 6. 11.  
1 Hale, 434.  
569, 570.  
Plow. 19.  
Pult. 125.  
Foster, 70.  
(a) 1 Hale, 27.

**Sect. 8.** And if it appear by the circumstances, that an infant under the age of discretion could distinguish between good and evil, as if one of the age of nine or ten years kill another, and hide the body, or make excuses, or hide himself, he may be convicted and condemned, and forfeit, &c. as much as if he were of full age. But in such a case the judges will in prudence respite the execution, in order to get a pardon: and it is said, that if an infant, apparently wanting discretion, be indicted and found guilty of felony, the justices themselves may dismiss him without a pardon, &c.—† But this authority to dismiss him must be understood (a) of a reprieve before judgment, or that the jury find the prisoner within the age of seven years, or not of sufficient discretion to judge between good and evil.

Leges Inæ, 58.  
S. P. C. 16. 42.  
27 Ass. 40.  
Sum. 65.  
Kely 31.  
1 Hale, 45, 516.  
B. Cor. 16. 108.  
Dalt. 134. 157.  
4 Comm. 28.

**Sect. 9.** As to THE SECOND POINT, viz. how far those are to be excused who are under the power of others:—A *feme covert* is so much favoured in respect of that power and authority which her husband has over her, that she shall not suffer any punishment for committing a bare theft (7) in company with, or by coercion of, her husband.

3 Inst. 108.  
Sum. 65.  
1 Hale, 44.

**Sect. 10.** Neither shall she be deemed accessory to a felony for receiving her husband who has been guilty of it, as her husband shall be for receiving her.

Sum. 65, 66.  
Dalt. 104.  
F. Cor. 199.  
383.  
2 Bk. 3. 29.  
134.  
1 Hale, 45, 516.

**Sect. 11.** But if she commit a theft of her own voluntary act, or by the bare command of her husband, or be guilty of treason, murder, or robbery, in company with, or by coercion of, her husband, she is punishable as much as if she were sole.

Lucas, 63. Kely. 31. S. P. C. 13. 142. 2 Comm. c. 20. 4 Comm. 29.

*Sect.*

(7) The principle upon which the wife is excused from punishment for offences committed in her husband's company is, that she owes him the highest obedience. And this the law of England carries so far as to excuse her from the punishment of certain felonies committed in his presence, which the law presumes to be equivalent to coercion and command on his part. But she is answerable in all cases when she offends alone, and Mr. Serj. Hawkins states above, that she is responsible in cases of treason, murder, and robbery, though committed in company with her husband. With respect to treason and murder, there is no doubt. But it may be doubted whether he is correct when he says she is not privileged in robbery. It is not a more heinous offence than burglary, and in the latter case she is privileged (Kelynge, 31.) Treason and murder form exceptions, the first being founded in policy, and murder *propter odium detecti*. This presumed coercion, however, arising from the presence of the husband, is but a legal presumption, and like other legal presumptions

may be repelled by evidence, to shew that she was the instigator of the offence, in which case she, as well as the husband, may be convicted, (1 H. H. P. C. 516.) And herewith agrees the ancient law as stated by Bracton, (lib. 3. c. 32.) who says, "*Quid erit si uxor cum viro conjuncta fuerit, vel confessa fuerit quod viro suo consilium presterit et auxilium? Nunquid tenebuntur ambo? imò ut videtur*"—and he goes on to add, "*sicut sunt participes in crimine, ita debent esse participes in pena.*" From the same author it also appears, that if the stolen goods were found in her own peculiar possession, it was a presumption of her guilt. "*In certis casibus,*" says he (in the same chapter) "*de furto tenebitur uxor si furtum inveniatur sub clavibus, quas quidem claves, habere debet uxor sub custodia et cura sua; claves, vis. dispensæ suæ, arce suæ et scrinii sui, et si ali- quando furtum sub clavibus istis inveniatur, uxor cum viro culpabilis erit, sc. vir si consenserit vel rem et warrantizabit.*"

*Sect. 12.* Also a wife may be indicted together with her husband, and condemned to the pillory with him for keeping a bawdy-house; for this is an offence as to the government of the house, in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex.

*Sect. 13.* And generally a *feme covert* shall answer, as much as if she were sole, for any offence not capital, against the common law, or statute: and, if it be of such a nature that it may be committed by her alone, without the concurrence of the husband, she may be punished for it without the husband, by way of indictment; which being a proceeding grounded merely on the breach of the law, the husband shall not be included in it for an offence to which he is no way privy. And if a woman bring a malicious appeal for the death of her husband, known by her to be alive, she may be imprisoned for the false appeal, till she make fine to the king, and the husband shall go at large. But if a wife incur the forfeiture of a penal statute, the husband may be made a party to an action or information for the same (as he may be generally to any suit for a cause of action given by his wife), and shall be liable to answer what shall be recovered thereon.

*Sect. 14.* Neither a son nor a servant are excused the commission of any crime, whether capital or not capital, by the command or coercion of the father or master. (8)

(8) There are also other defects of will which save the parties from guilt and punishment; as "*Ignorance*." But this must be an ignorance of fact, as where one, upon being alarmed in the night by the cry of robbers breaking into his dwelling-house, in mistake killed a person who had been secreted in his house by his servant, supposing him to have been one of the thieves; and not an ignorance of law; for ignorance of the law excuses no one. Every one of the age of discretion and

compos mentis is bound to know the law and presumed so to do, "*Ignorantia eorum quæ quis scire tenetur not excusat*," (Ploviden, 343. a. II. II. P. C. c. 6.) Compulsion and fear are also matters of excuse. As where an enemy compels a man to serve against his lawful sovereign, (II. II. P. C. c. 8. & 9.) But these circumstances of excuse must be proved by the prisoner, unless they arise out of the evidence against him, (Foster, 255. Lord Raymond, 1493.)

## CHAP. II.

### OF HIGH TREASON. (1)

OF OFFENCES against MAN, some are more immediately against THE KING, others more immediately against the subject. Prin. P. L. 116.

#### Offences

(1) It is, perhaps, one of the most important rights of a free state, that the law of high treason should be well defined, and that what acts shall and shall not be considered treason should be clearly ascertained. If the crime of high treason be indefinite, says Baron Montesquieu, this alone is sufficient to make the government degenerate into arbitrary power. - Sp. L. b. 12, c. 7. With us the statute of 25 Ed. 3 c. 2. has always been considered as a firm bulwark and protection of the subject against the oppression of sovereign power under the pre-

text of law. Sir Edward Coke calls it a *blessed* statute. And although, since the period of its first enactment, the Statute Book of England, in the times of tyranny and of faction, has been disgraced with many absurd and wanton enactments on the subject of high treason, yet in the healthier times of our constitution, we have always recurred to this statute as to a standard which ought not to have been departed from. The statute itself created no new treason, but the matters therein declared to be high treason were all clearly so considered at com-

mon

Offences more immediately against THE KING are either capital or not capital. The capital offences of this nature are either HIGH TREASON or FELONIES.

And

mon law. But also before the passing of that act many other matters had been ruled to be treasons, which had not been before well defined. Amongst these was "acchoaching royal power," which was an offence evidently so ill-defined, that whatever the ruling power of the day chose to consider an acchoachment of royal power, might bring a man within the guilt and penalties of treason. But the compassing the death of the King or his heir—the violating his wife, or his heir's wife—the forgery of his seal—seem always to have been considered such acts of treachery, that, by the feudal constitutions, if a tenant had offended against his lord in these respects, it was a forfeiture of his feud, being a treacherous breach of that fealty\* which the tenant owed his lord in return for the protection which the lord, by the same feudal constitutions, was bound to afford his tenant. So with respect to the king and his subjects—the same acts were an aggravated degree of treachery and breach of that allegiance which the latter owed to the former. Hale in his History, b. i. c. 12. gives several cases which had been ruled to be treasons before the passing of the statute, and particularly the one which probably produced the petition of the Commons upon which the statute was founded. The record of the case is, *Trinity, 21 Ed. 3. Rot. 23.* John Gerbage, Knight, was indicted "*quod ipse simul cum aliis in campo villa de Royston in altâ regiâ strati,*" rode armed with his sword drawn in his hand, "*modo guerino,*" and assaulted and took William de Bottisford, and detained him till he paid £90. for his ransom, and "*Usturpando sibi in fra regnam regis Regiam potestatem ipso domino Rege in partibus exteris existente contra sui ligeantiam et regis et coronæ suæ prejudicium et seditionem manifestam.*" He prayed his clergy, but was ousted of it, because "*privilegium cleri de in hujusmodi casu seditionis, secundum legem et consuetudinem, regni hactenus obtentas et usuras, non et alio modum.*" But he, refusing to plead upon the denial of clergy, was not convicted as in case of treason, but was put to penance, "*et penitentiam suam.*" Two of his companions being convicted by verdict, had judgment, "*quod distraherentur et suspendantur.*" This judgment it seemed troubled the Commons in parliament, who thought that the acchoaching of royal power was somewhat too general a charge of treason before the ordinary courts of justice, though it had been used in charges of treason in parliament, and, therefore, in the parliament following, held *Crastino Hilarii, 21 Ed. 3. n. 15.* there is a petition in parliament in these words—"Item, prie les communes que come aucuns des justices on place de vant eux ou de nozeli ont adjudges par treason, acchoachment de royal poer, pry le dit Commen que le point soit desclaire en ce parlement, en quelle case ils acchoachent royal poer, par quei les seigneurs perdent leur profit de la forfeiture de leur tenens et les arreyntes benefice de Saint Eglise." It is remarkable in this petition, that the Commons seem sensibly

alive to the loss of the profits of the forfeiture of their tenants by thus enlarging treasons; as in the case of a conviction for treason the crown took the forfeited estate and not the lord, as in cases of felony. And, perhaps, it might be more this feeling of self-interest that made them anxious to restrain the law of treason within proper limits, than any enlarged views of political security against the inchoachment of power upon private and personal freedom. However, it appears that the statute itself points at a case such as the one above cited, for after enacting what shall thereafter be considered treason, it goes on to add, "And if, par case, any man of this realm ride armed, covertly or secretly, with men of arms against any other to slay him or rob him, or take him, or retain him until he hath made fine or ransom to have his deliverance, it is not the mind of the King or his council, that in such case it shall be judged treason, but shall be judged felony or trespass, according to the laws of the land of old times used, and according as the case requireth." But to whatever motives in the Commons the petition may be ascribed, it has produced a statute which is and ought to be revered by the English people, as most clearly defining what shall and what shall not be considered high treason. The enactments are distinct and intelligible, and Sir M. Hale observes, upon a review of them and former cases,—1. How necessary it was that there should be some fixed and settled boundary for this great crime of treason; and of what great importance the statute of Ed. 3. was for that end. 2. How dangerous it is to depart from the letter of that statute, and to multiply and enhance crimes into treason by ambiguous and general words, as "acchoaching royal power," "subverting of fundamental laws," and the like. 3. How dangerous it is, by construction and analogy, to make treasons where the letter of the law has not done it. For such a method admits of no limits or bounds, but runs as far as the wit and invention of accusers and the odiousness and debasement of persons accused will carry men." This doctrine worthy of the great and good man who delivered it, but that it has been observed by all succeeding judges cannot be said with truth. For it may be justly doubted whether some of the constructions subsequently put upon the statute are fairly warranted by its text. Thus it has been ruled and is now settled, that any attempt to restrain the royal person, or to conspire to levy war against him, are overt acts of compassing his death. Does it not look like making a constructive treason where the letter of the law has not done it? So again, the constructive levying of war. And although the statute requires every treason to be manifested by "open deed, and the parties provably attainted by persons of their own condition," yet we see that there has been a strong inclination at some periods to make mere words an "open deed," or, in other words, to create constructive overt acts of constructive

\* See Mirror, c. 1. s. 7.

## And FIRST, of HIGH TREASON.

*Sect. 1.* Before the 25 Edw. 3. c. 2. there was great diversity of opinions concerning high treason; and many offences were taken to be included in it, besides those expressed in the said statute; as the killing of the king's father, brother, or even his messenger; producing the pope's bull of excommunication, and pleading it in disability; refusing to accuse a man in the king's courts, and summoning him to appear, and defend himself before a foreign prince; and other such like acts tending to diminish the royal dignity of the crown.

3 Inst. 7.  
B. Treas. 14.  
22 Ass. 49.  
30 Ass. 19.  
Staunf. 2.  
Prin. P. L. 126  
to 130.  
1 Hale, 76 to  
87.

*Sect. 2.* But all TREASONS were settled by the statute of 25 Edw. 3. c. 2. which, by 1 Mary, sess. 1. c. 1. was reinforced, and again made the only standard of treason. All statutes, therefore, between the statute of 25 Edw. 3. and the statute 1 Mary, sess. 1. c. 1. which made any offence high treason or petit treason, or misprision of treason, are abrogated; so that no offence is, at this day, to be esteemed high treason, unless it be either declared to be such by the above statute of King *Edward the Third*, or made such by some statute since the first of *Queen Mary*.

Plow. 86.  
3 Inst. 12. 21.  
18 Eliz. c. 1

36 Geo. 3. c. 7.  
57 Geo. 3. c. 6.

I shall therefore consider, FIRST, such offences as are high treason within the said statute of 25 Edw. 3. or other statutes grounded thereon, and explaining the same.—SECONDLY, such as are made high treason by subsequent statutes.

By the statute of *Edward the Third* there are four kinds of HIGH TREASON;

1 Hale, 87.  
Sum. 17.

1. That which immediately concerns the king, his wife, or children.
2. That which concerns his office in the administration of justice.
3. That which concerns his seal.
4. That which concerns his coin.

And

constructive treasons. Such, at some periods of our history, has been the servility of judges to royal authority. Indeed we need go no farther than the next reign of Richard II. after passing the statute, to see how far a bench could disgrace itself. After a commission had been extorted from that weak prince, by parliament, by which certain nobles were empowered to administer public affairs and to redress grievances arising from that mal-administration, unwilling to submit to the restraints imposed upon him, in the 11th year of his reign he called together divers of his judges, the two chief justices, and some other men of the law, and propounded to them certain questions, amongst others, "*Qualem parum mereantur, qui compulerunt sive arc-tarunt Regem, ad consentiendum confectioni dictorum statuti, ordinationis et commissionis? Ad quam questionem unanimiter responderunt, quod sunt ut proditores merito puniendi. Item, qualiter sunt illi puniendi qui impediverunt regem, quo minus poterat*

*exercere quæ ad regalia et prerogativam suam perti-nuerunt? Unanimiter etiam responderunt quod sunt "ut proditores etiam puniendi."*—(State Trials, vol. i. p. 107. 110. N. Ed. p. 8. 13, 14. O. E.) But this doctrine was their own ruin; for Gloucester and the factious nobles being predominant, the judges were all themselves declared guilty of high treason for these opinions, and sentenced to be hanged, drawn, and quartered. Tresillian, the chief justice, was executed, the rest had their sentences mitigated into banishment to Ireland. The sentence against them was clearly illegal, but they had taught their opponents the way to let loose from the rigid rule of law. And when judges, who are the expositors of law, or, as they have been called, "*Lex loquens*," with a statute before them, whose enactments are so distinct as the statute of treasons, could so far forget their duty to their country as to give such opinions as above stated, it is not matter of regret that the evil recoiled upon their own heads.

And these three last are called Interpretative Treasons.

HIGH TREASON concerning the king, his wife, and children, is thus declared :

*Sect. 3.* By the said statute of 25 Edw. 3. stat. 5. c. 2.  
 1 H. 4. c. 10. “Whereas divers opinions have been before this time, in what  
 Kely. 20. “case treason shall be said, and in what not, the king, at the re-  
 3 Inst. 1. 6. 113. “quest of the lords and of the commons, hath made a declaration  
 8 Co. 28. “in the manner as hereafter followeth; that is to say, when a  
 Dyer, 98. 298. “man doth compass or imagine the death of our lord the king,  
 128. 332. “or of our lady the queen, or of their eldest son and heir; or if  
 B. Trea. 1, 2, 3. “a man do violate the king’s companion, or the king’s eldest  
 7. 9. 11. 13. 16. “daughter unmarried; or the wife of the king’s eldest son and  
 19. 24. 27. 32. “heir; or if a man do levy war against our lord the king in his  
 Co. Pla. 360. “realm, or be adherent to the king’s enemies in his realm, giving  
 3 Co. 2. 10. “them aid and comfort in the realm or elsewhere, and therefore be  
 4 Co. 57. “provably attainted of *open deed* by the people of their condition.”  
 7 Co. 33.  
 13 Co. 54.  
 Savil, 4.

For the explication of which I shall consider,

FIRST, The branch relating to the king and his relations.

SECONDLY, That concerning the levying of war, and adhering to the king’s enemies, &c.

THIRDLY, That concerning an overt act.

I. As to the branch relating to the king and his relations, I shall consider the following particulars: 1. Who may be guilty? 2. What is the import of the words, “*compass or imagine the king’s death?*” 3. Who is a king within the act? 4. What is the extent of the clause concerning the king’s relations?

*Sect. 4.* As to the FIRST POINT, viz. Who may be guilty? I shall take it for granted at this day, that all subjects of the age of discretion, and of sane memory, whether they be ecclesiastical or temporal, men or women, are included within those general words, “When a man doth compass, &c.”  
 Keilw. 181. &c.  
 3 Inst. 4. 8.  
 4 Comm. 29.  
 Bac. Max. 56.  
 5 Bac. Ab. 112.

*(a)* B. Trea. 32. *Sect. 5.* Also it seems clear, that the subjects of a foreign prince coming into *England*, and living under the protection of our king, may, in respect of that *locus ligeance* which they owe to him, be guilty of high treason *(a)*, and indicted *(2)*, that they *contra dominum regem* (the words *naturalem dominum suum* being omitted) did compass, &c. *contra ligeantiam suam debitum (b)*. And it is said, that even an ambassador committing a treason *against the king’s life*, may be condemned and executed here; and that for other treasons he shall be sent home. And it hath been holden, that there is no need of the words *contra ligeantiam suam debitum* in an indictment for a treason which is made such by statute, and is not a treason in its own nature; and that there is  
 3 Inst. 5. 11.  
 Calvin’s case, 6.  
 Co. Lit. 129.  
 Sum. 10. 15.  
 1 Hale, 96.—  
 100.  
 5 St. Tr. 23.  
 6 St. Tr. 87.  
 (b) Dyer, 145.  
 Hob. 271.  
 Salk. 631. 633.  
 Carth. 319.  
 Skin. 360. 425.  
 Fos. 186, 187.  
 L. Ray. 1.

no

(2) On the 12th June, 1707, a rule to the following effect was laid down by all the judges: “If  
 “an alien, seeking protection in England, and  
 “having a family and effects here, should, during

“a war with his native country, go thither, and  
 “there adhere to the king’s enemies for purposes of  
 “hostility, he may be dealt with as a traitor.”—  
 Foster’s C. L. 185.

no necessity for the words *contra ligeum supremum dominum suum* in any indictment of treason.

3 Lev. 396.  
4 Mod. 162.  
395. 7 Co. 6.  
12 Mod. 51. 95. 1 Hale, 59.

*Sect. 6.* But it seemeth that aliens, who in a hostile manner invade the kingdom, whether their king were at war or peace with ours, and whether they come by themselves or in company with English traitors, cannot be punished as traitors, but shall be dealt with by martial law.

B. Trea. 1. 32.  
3 Inst. 11.  
Con. Dalis. 32.  
7 Co. Rep. 6.  
5 Bac. Ab. 112.  
5 St. Tr. 23.

*Sect. 7.* It hath been resolved (c), That one born a natural subject is bound to such an inseparable allegiance to our king, that howsoever he may endeavour to renounce it, and transfer his subjection from his natural to a foreign prince, yet if he practise what in any other subject would amount to high treason, he shall suffer as a traitor.

(c) Dr. Storey's case, Dy. 300.  
Co. Lit. 129.  
1 Hale, 68, 96.  
and see Macdonald's case, Foster C. L. 59.  
and 185.

*Sect. 8.* As to THE SECOND POINT, *viz.* the import of the words "compass or imagine the king's death;" since the said statute these words have been so strictly followed, that where a king has been actually murdered, yet not the killing him, but the compassing his death has in the indictment been laid as the treason, and the killing as an overt act thereof.

Kely. 8.  
1 Hale, 107.  
119.—167.  
Prim. P. L. 123.  
Fost. 193, 196.  
3 Inst. 12.

*Sect. 9.* And such compassing the king's death may be manifested not only by overt acts of a direct conspiracy to take away his life, but also by such as shew such a design as cannot be executed without the apparent peril thereof; as by (a) writing letters to a foreign prince, inciting him to invade the realm; or assembling men together in order to (b) imprison or (c) depose the king, or to (d) compel him by force to yield to certain demands, or to levy war against his (e) person.

(a) Dyer, 298.  
Burr. 646.  
Sum. 11.  
1 St. Tr. 199.  
206.  
2 Vern. 315.  
3 Inst. 14.  
4 St. Tr. 406.  
1 Hale, 120.  
(b) 3 Inst. 6.  
12. 38.

(c) Kely. 20, 21, 22. Qu. B. Trea. 24. (d) 11 Mod. 322. Moor, 621. (e) Kely. 14, 15. 17. 20, 21. 3 Inst. 6. 12. 38. Kely. 20, 21, 22. Yet this was made a query in B. Trea. 24. 11 Mod. 322. Moor, 621. Kely. 11, 15. 20, 21.

*Sect. 10.* But it is possible that it may not be proved by an act which directly causes the king's death, as the glancing of an arrow did that of *William Rufus*, proving fatal merely through an unfortunate accident, and being accompanied with no unlawful circumstance.

5 Inst. 6.  
1 Hale, 107.

*Sect. 11.* As to THE THIRD POINT, *viz.* Who is a king within this act? it seems agreed, that every king for the time being, in actual possession of the crown, is a king within the meaning of this statute. For there is a necessity that the realm should have a king, by whom and in whose name the laws shall be administered; and the king in possession being the only person who either doth or can administer those laws, must be the only person who has a right to that obedience which is due to him who administers those laws; and since by virtue thereof he secures to us the safety of our lives, liberties, and properties, and all other advantages of government, he may justly claim returns of duty, allegiance, and subjection.

3 Inst. 7.  
9 Ed. 4. 1.  
1 Hale, 101.  
&c.  
Fost. 188. 400.  
4 Comm. 77.

*Sect. 12.* And this plainly appears even by the prevailing opinions

1 Hale, 61. 102.  
Stow. Ann. 416.

Fos. 398. 186.  
9 Ed. 4. 1.  
B. Treas. 10. 32.  
3 Inst. 7.  
Dalt. 223.

nions in the time of king *Edward the Fourth*, in whose reign the distinction between a king *de jure* and *de facto* seems first to have begun; and yet it was then laid down as a principle, and taken for granted in the arguments of *Bagot's Case*, that a treason against *Henry the Sixth* while he was king, in compassing his death, was punishable after *Edward the Fourth* came to the crown; from which it follows, that allegiance was allowed to have been due to *Henry the Sixth* while he was king, because every indictment of treason must lay the offence *contra ligeantia debitum*.

9 Ed. 4. 1, 2.  
B. Judg. 42.  
C. of Par. 22.  
Patents, 21.  
Denizen, 3.  
Exempt, 4.  
Judg. 42. F.  
Ass. 29. Deniz. 1.

*Sect. 13.* It was also settled, That all judicial acts done by *Henry the Sixth* while he was king, and also all pardons of felony and charters of denization granted by him, were valid; but that a pardon made by *Edward the Fourth* before he was actually king, was void even after he came to the crown.

9 Ed. 4. 1, 2. 11. 9 Ed. 4. 2.

4 Inst 43.  
1 Bl. Com. 90.  
4 Bl. Com. 78.

*Sect. 14.* And by the 11 Hen. 7. c. 1. it is declared, "That all subjects are bound by their allegiance to serve their prince and sovereign lord for the time being, in his wars, for the defence of him and his land against every rebellion, power, and might reared against him, &c. and that it is against all laws, reason and good conscience, that they should lose or forfeit any thing for so doing;" and it is enacted, "That from thenceforth no person or persons that attend on the king for the time being, and do him true and faithful allegiance in his wars, within the realm or without, shall for the said deed and true duty of allegiance be convict of any offence."

Foster, 399.  
Cus. de Nor-  
mand, 13.  
Fleta, b. 3. c. 16.  
s. 22.

*Sect. 15.* From hence it clearly follows, First, That every king for the time being has a right to the people's allegiance, because they are bound thereby to defend him in his wars against every power whatsoever.

4 Comm. 77.  
Foster, 188.

*Sect. 16.* Secondly, That one out of possession is so far from having any right to our allegiance by virtue of any other title which he may set up against the king in being, that we are bound by the duty of our allegiance to resist him.

Foster, 402.  
Kely. 14.

*Sect. 17.* It is true indeed, that after the restoration of king *Charles the Second*, it was resolved, that all those who acted against and kept him out of possession, in obedience to the powers then in being, were traitors.

Kely. 14, 15.  
1 Keb. 315.  
Foster, 403.  
4 Comm. 77.

*Sect. 18.* But it ought to be considered, that it was first resolved by the same judges, that king *Charles the Second* was king *de facto* as well as *de jure* from his father's death; and it is apparent, that no other person was in possession of any sovereign power known to our laws.

3 Inst. 7.  
1 Hale, 61. 102.  
Fos. 188, 189.

*Sect. 19.* However, it is a general uncontested rule, that upon the death of a king in actual possession of the crown, his heir is a king within the act before his coronation; for without a king  
to

to execute the laws, justice must fail; and therefore it is a maxim, that "*the king never dies.*"

*Sect. 20.* A *titular king*, as the husband of a *queen regnant*, seems to be within the words, yet it is clearly not within the meaning of this law; and *è converso* a *queen regnant* is not within the strict words, and yet she is undoubtedly within the meaning; for by the words "our lord the king" is meant any person invested with regal power.

1 Hale, 102. 106.  
1 Mar. st. 3.  
c. 1.  
3 Inst. 8.  
4 Comm. 76, 77.

*Sect. 21.* By 1 Will. & Mary, sess. 2. c. 2. s. 9. "Every person that shall be reconciled to, or hold communion with, the church of Rome, or profess the Popish religion, or marry a Papist, shall be excluded, and be for ever incapable to inherit, possess, or enjoy THE CROWN of this realm, &c." and in every such case the people of this realm are absolved from their allegiance, &c.

*Sect. 22.* As to THE FOURTH POINT, *viz.* The extent of the clause concerning the king's relations; it is to be observed, *First*, That no queen, or princess dowager, is any way within the purview of it. *Secondly*, That if "the companion" (by which word is meant the wife) of the king or prince consent to an adulterer, she is no less guilty of high treason than he. *Thirdly*, That under the words "their eldest son and heir," the son of a queen regnant is included, and also the second son after the death of the first, and *perhaps* also a collateral heir apparent, especially if he be declared such by parliament.

Hale, 124, &c.  
Britt. c. 22.  
3 Inst. 2. 8.  
4 Comm. 81.

II. Of HIGH TREASON concerning the levying of war, &c. and adhering to the king's enemies, &c. I shall consider,

1 Hale, 131. 141.  
150. 153.  
Foster, 208.

FIRST, What acts shall be said to amount to a levying of war against the king.

SECONDLY, What shall be said to be an adherence to the king's enemies.

*Sect. 23.* As to THE FIRST POINT, it is to be observed, that not only those who directly rebel against the king, and take up arms in order to dethrone him, but also in many other cases, those who in a violent and forcible manner withstand his lawful authority, or endeavour to reform his government, are said to levy war against him; and therefore,

Foster, 193.

*Sect. 24.* Those that hold a fort or castle against the king's forces, or keep together armed numbers of men against the king's express command, have been adjudged to levy war against him. But those who join themselves to rebels, &c. for fear of death, and retire as soon as they dare, seem to be no way guilty of this offence.

Foster, 13, 14.  
216, 217, 219.  
3 Inst. 16.  
B. Treas. 24.  
Dalt. c. 89.  
1 Hale, 49, 139.  
146, 296, 168,  
169.

Moor, 621. 2 And. 5. Kely, 75. 9 St. Tr. 57. 566. Salk. 635.

*Sect. 25.* Those also who make an insurrection in order to redress a public grievance, whether it be a real or pretended one, and of their own authority attempt with force to redress it, are said to levy war against the king, although they have no direct,

1 Hale, 131.  
135, 152, 153.  
Moor, 621.  
C. Car. 583.  
589.

rect,



Pop. 122.  
 2 And. 4, 5.  
 3 Inst. 9.  
 1 Ven. 250.  
 Kely. 76.  
 2 Wils. 365.  
 8 St. Tr. 289.  
 Foster, 209,  
 210, 211.  
 Dougl. 510.

rect design against his person, inasmuch as they insolently invade his prerogative, by attempting to do that by private authority which he by public justice ought to do, which manifestly tends to a downright rebellion; as where great numbers by force attempt to remove certain persons from the king; or to lay violent hands on a privy councillor; or to revenge themselves against a magistrate for executing his office; or to bring down the price of victuals; or to reform the law or religion; or to pull down all bawdy-houses; or to remove all inclosures in general, &c. (3). But where a number of men rise to remove a grievance to their private interest, as to pull down a particular inclosure intrenching upon their common, &c. they are only rioters.

1 Hale, 136.  
 158.  
 1 Sid. 358.  
 3 And. 66.  
 Pop. 121.  
 3 Inst. 9.  
 Kely. 75, 79.  
 Moor, 621.  
 Ld. Raym.  
 1585.  
 1 Black, 47.

*Sect. 26.* In a special verdict, not only those who are expressly found to have been aiding and assisting a rebellious insurrection, but perhaps also those who are only found to have acted in the execution of the intended violence, or to have attended the principal offender from the beginning, though they be not found to have known the design of the rising, shall be adjudged guilty of high treason. But those who are found only to have suddenly joined with them in the streets, and to have flung up their hats and hallooed with them, are guilty of no greater offence than a riot at most.

1 Hale, 131.  
 151.  
 Dalis. 14, 15.  
 4 St. Tr. 63.  
 97.  
 Dyer, 98.  
 Kely. 19, 20.  
 Post. s. 31.  
 11et. 65.  
 3 Inst. 9, 14.  
 (a) Salk. 635.  
 3 Inst. 11. 1 Hale, 165 to 169. Sum. 14, 115. Dalis. 89, 224. 2 Ven. 31, 315, 316. 5 Bac. Ab. 117. Prin. P. L. 122. 10 Mod. 322. Foster, 211, 213, 342.

*Sect. 27.* However it is certain, that a bare conspiracy *to levy such a war* cannot amount to this species of treason, unless it be actually levied. Yet it hath been resolved, that a conspiracy (†) to levy war against the king's person may be alleged as an overt act of *compassing his death*, and that in all cases if the treason be actually completed, the conspirators, &c. are traitors as much as the actors; and (a) that there may be a levying of war, where there is no actual fighting.

(b) Salk. 634.  
 Moor, 620.  
 4 St. Tr. 347.  
 &c.  
 (c) 4 St. Tr. 317.  
 3 Inst. 12, 13.  
 Salk. 635.  
 1 Hale, 108.  
 159.  
 3 Inst. 13, 14.  
 B. Treas. 24.  
 Fos. 197, 220.  
 4 Comm. 82.

*Sect. 28.* AS TO THE SECOND POINT, *viz.* What shall be said to be an adherence to the king's enemies, &c. this is explained by the words subsequent, "giving aid and comfort to them;" from which it appears, that any assistance given to aliens in open hostility against the king, as by surrendering a castle of the king's to them for reward, or selling them arms, &c. or assisting (b) the king's enemies against his allies, or cruising in a ship with enemies to the intent to destroy the king's subjects, is clearly within this branch. But there is no necessity expressly to allege, that such adherence (c) was against the king, for it is apparent; yet the special manner of adherence must be set forth. And it is said, that the succouring a rebel fled into another realm is not within

(3) An attempt by intimidation and violence to force the repeal of a law, is a levying of war against the king, and high treason. Lord Mansfield, Dougl. 570.

(4) By 15 Eliz. and 15 Car. 2. conspiracies to

levy war were declared high treason; and several judgments were given upon those statutes; but they both expired with the reigns they were designed to protect. Fost. 213.

within the statute, because a "rebel is not properly an enemy," and the statute is taken strictly.

III. As to the branch relating to an *overt act*, there hath been some question concerning what shall be said to be an *overt act*; as to which I shall consider, What *facts* amount to such an overt act? and, Whether any *words* be sufficient?

*Sect. 29.* I shall take it for granted, that some overt act must be alleged in every indictment of high treason, in compassing the death of the king, &c. or levying war, or adhering to the king's enemies. Fos. 194. 20. 1 Hale, 122. 4. 6 St. Tr. 5 St. Tr. 21, 22.

*Sect. 30.* As to THE FIRST POINT, it seems clearly agreed by all, that conspiring the king's death, and providing weapons to effect it, or sending letters to incite others to procure it, or actually assembling people in order to take the king into their power, and all other such like notorious facts, done in pursuance of a treasonable purpose against the king's person, may be alleged as overt acts to prove the compassing his death. 10 Mod. 322. 3 Inst. 14. Kely. 20.

*Sect. 31.* It has also been adjudged, that the (a) levying war against the king's person; or the bare (b) consulting to levy such war; or meeting together and (c) consulting the means to destroy the king and his government; or (d) assembling with others, and procuring them to attempt the king's death; or listing (e) men in order to depose the king; or (f) printing treasonable positions, as that the king is accountable to the people, and that they ought to take the government into their own hands, &c. or publishing a book to prove that (g) the king's government is antichristian and heretical, &c. may be alleged as overt acts to prove the compassing the king's death. (a) Kely. 14. 17. (b) Kely. 20. 3 St. Tr. 149. 158. 173. 238. 4 St. Tr. 63. 79. 207. 277. 278. 282. Rushw. Strafford's Trial, 684. (c) Kely. 15. 3 St. Tr. 126. (d) 1 And. 106. (e) 2 Ven. 316. (f) 1 Kely. 22. 1 St. Tr. 977. 3 St. Tr. 228. Sup. s. 24. (g) 2 Roll. 89, 90. Fos. 346. 11 Mod. 322. 5 Bac. Ab. 117. Prin. P. L. 123.

*Sect. 32.* As to THE SECOND POINT, *viz.* Whether any words are sufficient overt acts? it has been holden, that written words in a sermon or other writing may amount to overt acts of compassing the king's death, though the same neither actually were, nor ever were intended to be, preached or published. But this opinion seems to be over-severe; for though it be true that *scribere est agere*, yet surely it cannot with any propriety be said, that to write in such a private manner *est aperte agere*, and it seems rigorous to make that amount to a malicious design against the king, which perhaps was only done by way of amusement or diversion (5). 2 Roll. 89. C. Car. 123. See the reversal of the attainder of A. Sidney, 1 W. & M. St. c. 7. private acts. 1 Hale, 119. 3 St. Tr. 733.

*Sect. 33.* But the great question is, Whether words only spoken can amount to an overt act of compassing the king's death? S. P. C. 2. Kely. 13.

(5) This is Peachum's case. The reporter says, that "many of the judges were of opinion "that it was not treason;" it therefore weigheth very little, and no great regard hath been paid to it ever since, Fos. 199.; and if the *dark manner*

be considered in which the conviction of this innocent clergyman was procured, still less regard will be paid to it. Foster, 199. Vide Bacon's Letters, 111. 117, and Hume's Hist.

3 Inst. 5. 14.  
140.

death? which having been questioned by some great men, and denied by others, I dare not be peremptory concerning it (6).

C. Car. 117.  
125.  
Foster, 200.

*Sect. 34.* However, it seems agreed that words spoken only in contempt and disgrace of the king, and not directly shewing any purpose to rebel, or any way to hurt his person, or disturb his government, as those which charge him with a personal vice, as drunkenness, &c. or a personal defect, as want of wisdom or steadiness, &c. shall not be so far strained as to be made overt acts of compassing his death, &c.

Yelv. 107.  
2 Roll. 90.  
Palm. 426.  
1 Black. 37.

*Sect. 35.* Indeed it has been holden, that to affirm that another has a better title than the king is high treason, because it tends to draw people from their allegiance, and to create a mutiny, &c.: but perhaps this may be questioned, because it cannot certainly appear from such words, whether the speaker had a design against the king's person or no. However, there can be no doubt but that such discourses are highly punishable as great misdemeanors, and tending to raise doubts, and to disturb the government.

See 6 Ann. c. 7.  
Post, sect. 106.

1 Roll. 185.  
14 H. 8. 12.  
Prin. P. L. 125,  
126.

*Sect. 36.* All the following words have been adjudged high treason: "If king *Henry the Eighth* will not take back his wife, he shall not be king, but shall die."—"If the king will arrest me for high treason, I will stab him."—"If I knew that *Perkin Warbeck*

(6) Although Hawkins speaks with doubt upon this point, Whether words alone can amount to an overt act of high treason? yet a man who dares to use his reasoning faculties unshackled by authority, and fairly applies them to the construction of the Statute of Treasons, will have no great doubt upon the subject. Words may be explanatory of an act. And where a man does a thing which in itself may be indifferent, his words, or declaration *quo animo* he does it, may be fair evidence of his intent. But words taken by themselves do not constitute an "overt act." Montesquieu says, Sp. L. b. 12. c. 13, They generally, when considered by themselves, have no determinate signification; for this depends on the tone with which they are uttered. It often happens, that in repeating the same words they have not the same meaning. This depends on their connection with other things; and sometimes more is expressed by silence than by any discourse whatsoever. As there can be nothing so ambiguous and equivocal as all this, how is it possible to convert it into the crime of high treason? Wherever this law is established, there is an end not only of liberty, but even of its very shadow. Such was the opinion of this able writer upon the theory of political liberty. But it is satisfactory to know, that such is now considered to be the law of England; and we cannot do better than transcribe the words of Mr. East, one of the latest and best writers upon Crown Law. "Whatever doubt (he says) may have been formerly entertained, or however the law may have been stretched in arbitrary times, to reach particular men, it is now settled that bare words, not relative to any act or design, however wicked, indecent, or reprehensible they may be,

are not in themselves overt acts of high treason, but only a misprision, punishable at common law by fine or imprisonment, or other corporeal punishment. They are frequently spoken in heat, without any intention to act accordingly; they are still more frequently mistaken or misremembered; and sometimes, it is to be feared, the sense of them knowingly perverted. It is one of the causes mentioned in the preamble of the statute 1 Mar. st. 1. c. 1, for repealing all intermediate treasons created since the statute of 25 Ed. 3, on account of the severity of those laws, that made words only, without other fact or deed, to be high treason. But words may expound an overt act, to shew with what intent it was done. As in *Croghan's Case*, who when at Lisbon said, that he would kill the king, if he could come to him; and afterwards coming to England, the overt act of coming here was explained by those words, and shewn to be with an intent to carry his purpose into execution: which seems to be the proper explanation of that case; the speaking the words, as well as the act of coming to England in order to kill the king, were laid as distinct overt acts. On the other hand, words of advice or encouragement to destroy the king, and above all, consultations for that purpose, are entitled to far different considerations: They expressly relate to such an act or design in contemplation; and come directly and properly under the notion of means made use of for that end. But the consultation or incitement is the overt act, and the words are properly evidence of it. One charge against Coke, one of the regicides, was the speaking as counsel against the king on his trial.

*Warbeck* was the son of *Edward the Fourth*, I would take his part against *Henry the Seventh*."

*Sect. 37.* But however the laws may stand in relation to such conditional words, or to loose words spoken without relation to any act, yet it seems clear that *words joined to an act may explain it*, and that words of persuasion to kill the king, or manifesting an agreement, or consultation, or directions to that purpose, are sufficient overt acts of compassing his death. And it hath been strongly holden, that any deliberate words which shew a direct purpose against the king's life, as these, "If I meet the king I will kill him," being spoken maturely and advisedly, are sufficient overt acts of compassing or imagining his death (7).  
 Salk. 631.  
 2 Ven. 315.  
 4 St. Tr. 30,  
 31, 95, 172.  
 1 Hale, 115,  
 116.  
 1 Roll, 185.  
 12 Mod. 72.  
 C. Car. 117,  
 118, 125, 332,  
 333.  
 1 Lev. 57.  
 2 St. Tr. 133.  
 135.  
 3 St. Tr. 295, 1001. 1 Keb. 14, 34, 179, 231. Dalt. 223, 224. 3 Mod. 53. Foster, 202. See the precedents cited C. Car. 118.

*Sect. 38.* And since the compassing or imagining of the king's death is the treason, and words are the most natural means of expressing the imagination of the heart, why should they not be good evidence of it? Besides, it has been often adjudged, that falsely to charge a man with speaking treason is actionable; which could not be if no words could amount to treason, as in the arguments of those cases it is clearly holden that they may, and not so much as made a question.  
 Yelv. 107, 197.  
 C. Jac. 276.  
 406, 413.  
 Hunt 75.  
 Winch. 124.  
 1 Bulst. 148.  
 3 Bulst. 225.  
 1 Roll, 444.  
 Fost. 202, 203.

*Sect. 39.* Besides, it is certain, that before the 25 Edw. 3. words might amount to treason; and it is a general rule, that in doubtful cases the reason of the common law ought to govern the construction of a statute. Also there can be no doubt but that he who by command or persuasion induces another to commit treason, is himself a traitor (for without question by such means he would be accessory to a felony; and it is an uncontroverted rule, that whatever will make a man an accessory in felony, will make him a principal in treason), and yet he does no act but by words.  
 S. P. C. 2.  
 Sum. 215.  
 Fos. 205, 207.

*Sect. 40.* As to *Sir Edward Coke's* argument from 3 Hen. 7. c. 14. which makes the compassing the king's death, or that of any of his council, &c. by the king's servants, felony; from whence he infers, that in the judgment of this parliament the compassing the king's death by bare words could not be treason before; it may be answered, that this argument extends as well to the king's servants compassing his death by any other act whatever, as to their doing it by bare words; for all are equally within the 3 Hen. 7. and yet none will contend but that the former hath always been treason.  
 5 Inst. 38.  
 1 Hale, 111.  
 Foster, 201,  
*in notis*.

*Sect. 41.* As to the argument, that compassing the king's death  
 Sum. 13.  
 by

(7) It is said, Kelynge 13, that in an indictment for "compassing the king's death," words may be laid as an overt act of that species of treason; yet Croghan's case, Cro. Car. 333, which he cites as a precedent for this doctrine, is said by Mr. Justice Foster, 203, by no means to warrant

the conclusion; because though the words above-mentioned were laid in that indictment, yet it further charged, that the speaker actually came into England for the purpose of killing the king.  
 1 Hale, 116.

1 Hale, 1115.  
115. 323.  
3 Inst. 14.  
Foster, 201.

Vide 2 Roll.  
89, 90.

by bare words cannot amount to treason within 25 Edw. 3. because many late temporary acts of parliament have made it treason, which would be needless if it were so before; it may be answered, that the principal end of those statutes was to make it treason to charge the king with heresy, or schism, or usurpation, or to affirm that it was lawful to take up arms against him, which the Romanists were apt to be guilty of at the beginning of the Reformation; and it may be questioned, whether these be overt acts of high treason within the statute of *Edward the Third*.

*Sect. 42.* Indeed it is recited in the preamble of 1 Mary, sess. 1. c. 1. "That the state of every king consists more assuredly in the love of the subjects towards their prince, than in the dread of laws made by rigorous pains; and that laws made for the preservation of the commonwealth without great penalties are more often obeyed and kept, than laws made with extreme punishments. And in special such laws so made whereby not the ignorant but also the learned, minding honesty, are often trapped, yea many times for words only, without other fact or deed done or perpetrated; and thereupon the queen calls to remembrance, that many, as well honourable persons as others of good reputation, had then of late for words only, without other opinion, fact, or deed, suffered shameful death, and expresses her pleasure, that the severity of such like extreme dangerous and painful laws shall be abolished." And then follows the enacting clause, "That from thenceforth none act or offence, being by act of parliament or statute made treason, petit treason, or misprision of treason, by words, writing, cyphering, deeds, or otherwise whatsoever, shall be taken, had, deemed, or adjudged to be high treason, petit treason, or misprision of treason, but only such as be declared and expressed to be treason, petit treason, or misprision of treason, by 25 Edw. 3. nor that any pains of death, penalty, or forfeiture, in any ways ensue to any offender for the doing any treason, &c. other than such as by the said statute of 25 Edw. 3. be ordained; any statute since the said twenty-fifth year of Edw. 3. or other declaration to the contrary in any wise notwithstanding."

Foster, 205.  
1 Hale, 111.  
115. 323.

*Sect. 43.* And it must be confessed, that this statute, *prima facie*, seems very much to favour the opinion, that no words whatsoever can of themselves amount to overt acts of high treason, inasmuch as one of the principal mischiefs intended to be redressed by it seems to be, that men had often suffered as traitors for words only; yet the force of this objection will be very much lessened, if we consider that the principal purport of the said statute of 1 Mary seems to be, to make the 25 Edw. 3. according to the intention of the makers of it, the only standard of treason, and to abolish all subsequent statutes, which had made many offences treason which were not contained in the said statute of 25 Edw. 3. but no way to extenuate the crimes mentioned in 25 Edw. 3. or to take away the force of any natural exposition thereof; for the first part of the preamble complains of such laws as not only inflicted punishments over-severe for the

the crimes intended to be restrained by them, but were also penned in such a manner as to be often apt to entrap the wisest by bare words. But surely this can no way be applicable to 25 Edw. 3. inasmuch as no punishments can be thought extreme for the crimes therein restrained, and there can be no danger from that statute of any man's being punished for unwary or innocent words, inasmuch as there is no colour to say that any words as such are punished within that statute, but only the most wicked imagination of the heart, which may be sometimes proved by the evidence of words. And it farther appears from the next part of the preamble of the said statute of 1 Mary, that it has an eye only to such statutes as are above-mentioned, inasmuch as it complains of persons having suffered shameful deaths for words only, without other opinion, fact, or deed, which is very applicable to those many statutes in the time of Henry the Eighth, as 26 Hen. 8. c. 13. and 35 Hen. 8. c. 3. and some others, which made bare words high treason, many of which were so far from purporting a design against the king's life, that they were scarce otherwise criminal than as they were prohibited by those statutes. But surely this can have no relation to 25 Edw. 3. either in punishing a man for such imaginations of the heart as are most perversely wicked, or in suffering those imaginations to be proved upon him from his own mouth. Also it is farther remarkable, that the enacting clause restrains only such offences as are made high treason by statutes subsequent to 25 Edw. 3. from being adjudged high treason by words, writing, cyphering, &c. and seems to leave the offences contained in the said statute to the same construction which they had before. 2 Shower, 411.

*Sect. 44.* As to the authority of *Sir Edward Coke* in his *Third Institute*, (a) it is of the less weight, because he is said to have been some time of the contrary opinion. (a) 3 Inst. 5.  
14. 140.  
1 Roll. 106.

*Sect. 45.* Neither does it appear to me, that my lord chief justice *Hale* was at all of this opinion; for though in the latter edition of his treatise of the *Pleas of the Crown* (b) it be said, that compassing by bare words is not an overt act, &c. yet in the first edition published in the year 1678, it is twice said, that it hath been adjudged that words are an overt act. (b) Old Ed.  
13. 16.

The stat. 36 G. 3. c. 7. intituled "An act for the safety and preservation of His Majesty's person and government against treasonable and seditious practices and attempts," reciting that "the Lords Spiritual and Temporal, and Commons, of Great Britain, in this present parliament assembled, duly considering the daring outrages offered to your Majesty's most sacred person, in your passage to and from your parliament, at the opening of this present session, and also the continued attempts of wicked and evil-disposed persons to disturb the tranquillity of this your Majesty's kingdom, particularly by the multitude of seditious pamphlets and speeches daily printed, published, and dispersed, with unremitting industry, and with a transcendent boldness, in contempt of your Majesty's royal person and dignity,

" nity, and tending to the overthrow of the laws, government,  
 " and happy constitution of these realms, have judged that it is  
 " become necessary to provide a further remedy against all such  
 " treasonable and seditious practices and attempts; and calling  
 " to mind the good and wholesome provisions which have at  
 " different times been made by the wisdom of parliament for the  
 " averting such dangers, and more especially for the security and  
 " preservation of the persons of the sovereigns of these realms,  
 " do most humbly beseech your Majesty that it may be enacted,  
 " and be it enacted, &c. that if any person or persons whatso-  
 " ever, after the day of the passing of this act, during the natural  
 " life of our most gracious sovereign lord the king, (whom Al-  
 " mighty God preserve and bless with a long and prosperous  
 " reign,) and until the end of the next session of parliament after  
 " a demise of the crown, shall, within the realm or without, com-  
 " pass, imagine, invent, devise, or intend death or destruction,  
 " or any bodily harm tending to death or destruction, maim or  
 " wounding, imprisonment, or restraint, of the person of the  
 " same our sovereign lord the king, his heirs and successors, or  
 " to deprive or depose him or them from the stile, honour, or  
 " kingly name of the imperial crown of this realm, or of any  
 " other of his Majesty's dominions or countries; or to levy war  
 " against his Majesty, his heirs and successors, within this realm,  
 " in order, by force or constraint, to compel him or them to  
 " change his or their measures or counsels, or in order to put any  
 " force or constraint upon, or to intimidate, or overawe both  
 " houses, or either house of parliament; or to move or stir any  
 " foreigner or stranger with force to invade this realm, or any  
 " other his Majesty's dominions or countries, under the obedi-  
 " sance of his Majesty, his heirs and successors; and such com-  
 " passings, imaginations, inventions, devices, or intentions, or any  
 " of them, shall express, utter, or declare, by publishing any  
 " printing or writing, or by any overt act or deed; being legally  
 " convicted thereof, upon the oaths of two lawful and credible  
 " witnesses, upon trial, or otherwise convicted or attainted by  
 " due course of law, then every such person and persons, so as  
 " aforesaid offending, shall be deemed, declared, and adjudged  
 " to be a traitor and traitors, and shall suffer pains of death, and  
 " also lose and forfeit as in cases of high treason." Made per-  
 " petual as to the king's successors by st. 57 Geo. 3. c. 6.

The statute 39, 40 Geo. 3. c. 93, recites that " It is expe-  
 " dient that in cases of high treason in compassing or imagining  
 " the death of the king, and of misprision of such treason, when  
 " the overt act or overt acts of such treason, alleged in the in-  
 " dictment for such offence, shall be the assassination or killing  
 " of the king, or any direct attempt against his life, or any  
 " direct attempt against his person, whereby his life may  
 " be endangered or his person may suffer bodily harm, the  
 " trial for such offence shall not be different from trials  
 " for murder or wilful and malicious shootings;" and enacts,  
 " That in all cases of high treason in compassing or imagining  
 " the

“ the death of the king, and of misprision of such treason, where  
 “ the overt act or overt acts of such treason, which shall be al-  
 “ leged in the indictment for such offence, shall be assassination  
 “ or killing of the king, or any direct attempt against his life, or  
 “ any direct attempt against his person, whereby his life may be  
 “ endangered or his person suffer bodily harm, the person or  
 “ persons charged with such offence shall and may be indicted,  
 “ arraigned, tried, and attainted in the same manner, and accord-  
 “ ing to the same course and order of trial in every respect, and  
 “ upon the like evidence, as if such person or persons stood  
 “ charged with murder: and none of the provisions contained in  
 “ the several acts of (8) 7 Wm. 3. (c. 3.) and 7 Ann. c. 21, respec-  
 “ tively, touching trials in cases of treason and misprision of  
 “ treason respectively, shall extend to any indictment for high  
 “ treason in compassing and imagining the death of the king, or  
 “ for misprision of such treason, where the overt act or overt  
 “ acts of such treason alleged in the indictment shall be such as  
 “ aforesaid; but upon conviction on such indictment, judgment  
 “ shall be nevertheless given and execution done as in other  
 “ cases of high treason; any law, statute, or usage to the contrary  
 “ notwithstanding.”

HIGH TREASON concerning the king's office in the adminis-  
 tration of justice, is expressed in the words following :

*Sect. 46.* By 25 Edw. 3. c. 2. “ If a man slay the chancellor, <sup>1 Hale, 230.</sup>  
 “ treasurer, or the king's justices of the one bench or the other,  
 “ justices in eyre, or justices of assize, and all other justices  
 “ assigned to hear and determine, being in their places during  
 “ their offices.”

*Sect. 47.* It hath been holden, that this part of the statute shall <sup>Sum. 17.</sup>  
 not be extended by equity to any other high officers of state be- <sup>3 Inst. 18. 38.</sup>  
 side these expressly named, nor even to these when they are not <sup>1 Hale, 231.</sup>  
 in actual execution of their offices, nor to any attempt to kill <sup>4 Com. 81.</sup>  
 them, nor even to the actual wounding of them unless death  
 ensue; therefore the barons of the exchequer, as such, are not  
 within the protection of this act; neither do the lord keeper or  
 commissioners of the great seal seem to be within it by virtue of  
 the statutes 5 Eliz. c. 18. and 1 W. & M. c. 21. But it is made  
 high treason by 7 Anne, c. 21. s. 8. to slay any of the lords of  
 session or judiciary of Scotland, in the exercise of their office.

HIGH TREASON relating to the king's seal.

*Sect. 48.* Is said to have been high treason at the common <sup>3 Inst. 15.</sup>  
 law, and by 25 Edw. 3. c. 2. is expressed in the following words: <sup>S. P. C. 2. 3.</sup>  
 “ And if a man counterfeit the king's great or privy seal.” <sup>1 Hale, 170.</sup>  
<sup>187.</sup>

*Sect. 49.* It hath been holden, that these words extend to the <sup>Kely. 80.</sup>  
 aiders and consenters to such counterfeiting, as well as to the <sup>4 Comm. 83.</sup>  
 actors.

*Sect. 50.* But not to an intent or compassing to do it, if it be <sup>Sum. 18.</sup>  
 not actually done.

*Sect.*

(8) For these statutes, *vide* Chapter on Evidence, B. 2.



Con. Dalt.  
c. 89.

*Sect. 51.* Nor to the fixing of the great seal to a patent without a warrant for so doing.

Kely. 80.  
3 Inst. 15.  
12 Co. 15, 16.  
2 Keb. 74.  
B. Treas. 3. 17.  
48.

*Sect. 52.* Nor to the razing of the name of one manor out of a patent and putting in that of another, nor to any artificial removing of the true writing, and adding matter altogether new: nor, by the better opinion, to the taking off the wax impressed with the great seal from a true patent, and fixing it to a writing purporting a grant from the king.

1 Roll, 30. 51.  
2 Roll, 50.

*Sect. 53.* Nor to the counterfeiting of the sign manual, or privy signet. But this is made high treason by the first of Mary, st. 2. chapter the sixth.

† And by 7 Anne, c. 21. s. 9. to counterfeit the seals used and continued in *Scotland* according to the twenty-fourth article of the union, is high treason.

To counterfeit  
the king's money  
is high treason.

HIGH TREASON respecting the *coin* is either with respect to counterfeiting the king's coin, or with respect to bringing false money into the realm.

*Sect. 54.* As to the FIRST BRANCH, of counterfeiting, it is declared by 25 Edw. 3. c. 2. "That if a man counterfeit the king's money he shall be guilty of high treason."

1 Hale, 213,  
214. 229.  
B. Treas. 27.  
Sum. 19, 20.  
127.  
3 Inst. 16.  
Con. 6 H. 7. 13.  
3 H. 7. 10.  
2 Inst. 375.  
3 Inst. 17.  
Brit. f. 10.  
Fleta, 1. c. 22.  
Kely. 33. Con. Dyer, 296. & 213. 1 Hale, 233.

*Sect. 55.* As to what degree of counterfeiting will amount to high treason, it is said, that those who coin money without the king's authority, are guilty of high treason within this act, whether they utter it or not; and that those who have the king's authority to coin money, are guilty of high treason, if they make it of baser alloy than they ought; (9) and that those also are guilty of the same crime, who receive and comfort one who is known by them to be guilty thereof; but that *clippers*, &c. are not within this statute. (10)

Varley's Case,  
2 Black. 632.

† It has been held, that to counterfeit the impression of a half-guinea on a piece of gold previously hammered, not round, and in a state not passable, is not high treason, for the crime is incomplete.

3 H. 7. 10.  
Sum. 128.  
B. Treas. 19.  
1 Hale, 214.  
373. 375.

*Sect. 56.* But it seems that those who barely utter false money made within the realm, knowing it to be false, are neither guilty of high treason, nor of a misprision thereof, but only of a high misprision.

But by 8 & 9  
Will. 3. c. 26.

they are in some cases made guilty of felony, for which see the next chapter.

2 Inst. 577.  
3 Inst. 17.  
2 Keb. 36.  
Dalt. c. 89.  
1 Hale, 193.  
192. 210 to

*Sect. 57.* As to what shall be said to be the king's money, it seems, that such only as is coined by the king's authority either in gold or silver within the realm, and consequently not *brass farthings*, &c. (a) shall come under this denomination.

213. 1 Burn, 359. 1 Comm. 278 Foster, 227. 12 Mod. 10. Co. Lit. 107. (a) But see ch. 18. s. 5.

*Sect.*

(9) The weight, fineness, and denomination of the coin is settled by indentures between the king and the master of the mint. For a history of the

coin of this country, see H. II. P. C. vol. 1. c. 17.

(10) But see *post*, s. 61. and 62.

*Sect. 58.* But the mischiefs intended to be remedied by this statute, having been found by experience not to have been sufficiently redressed by it, as thus restrained, the same have been farther provided for by subsequent statutes.

*Sect. 59.* For by 1 Mary, sess. 2. c. 6. "If any person or persons falsely forge and counterfeit any such kind of coin of gold or silver as is not the proper coin of this realm, and is or shall be current within this realm by the consent of the crown, they and their counsellors, procurers, aiders, and abettors, shall be guilty of high treason."

To counterfeit the current coin is high treason.  
1 Hale, 197.  
T. Jones, 233.

*Sect. 60.* And by 14 Eliz. c. 3. "If any person or persons falsely forge or counterfeit any such kind of coin of gold or silver as is not the proper coin of this realm, nor permitted to be current within this realm, they and their procurers, aiders, and abettors, shall be guilty of misprision of treason."

To counterfeit money neither proper nor current is misprision.  
3 Inst. 17.  
1 Hale, 376.

*Sect. 61.* And it is enacted by 5 Eliz. c. 11. s. 2. "That clipping, washing, rounding or filing, for wicked lucre or gain sake, of any the proper monies or coins of this realm, or the dominions thereof,—or of the monies or coins of any other realm allowed and suffered to be current within this realm or the dominions thereof, at this present, or that hereafter at any time shall be the lawful monies or coins of this realm, or of the dominions thereof, or of any other realm, and by proclamation allowed and suffered to be current here by the crown, or counselling, consenting and aiding therein, shall be deemed to be treason. And the offenders therein, their counsellors, consenters, and aiders, shall be adjudged as offenders in treason, and being lawfully convicted or attainted shall lose and forfeit all his goods and chattels, and all his lands and tenements during his natural life." But no corruption of blood or loss of dower.

To clip, wash, round or file any of the proper or current coin of the realm is high treason.

Dyer, 230.

*Sect. 62.* And by the 18 Eliz. c. 1. "If any person or persons shall for wicked lucre or gain sake, by any art, ways, or means whatsoever, impair, diminish, falsify, scale or lighten the proper monies or coins of this realm, or any the dominions thereof,—or the monies or coins of any other realms allowed and suffered to be current at the time of the offence committed within England or any the dominions of the same by the proclamation of the crown, their counsellors, consenters, and aiders shall be adjudged offenders in high treason, and lose and forfeit all their goods and chattels absolutely, and all their lands, tenements and hereditaments during his or their natural lives only." But no corruption of blood or loss of dower.

To impair, scale, or lighten any of the proper or current coin is treason.  
1 Hale, 221.  
328.

† *Sect. 63.* By 8 & 9 Will. 3. c. 26. made perpetual by 7 Anne, c. 25. it is enacted, "That no smith, engraver, founder, or other person or persons whatsoever (other than and except the persons employed in or for his Majesty's mint or mints in the Tower of London, or elsewhere, and for the use and service of the said mints only, or persons lawfully authorised by the lords commissioners of the treasury, or lord high treasurer

To make or mend any puncheon, counter-puncheon, &c. which will make or impress the similitude of the current coin, is HIGH TREASON.

of

" of England for the time being) shall knowingly make or mend, " or begin, or proceed to make or mend, or assist in the making " or mending of any puncheon, counter-puncheon, matrix, stamp, " dye, pattern, or mould of steel, iron, silver, or other metal or " metals, or of spaud or fine founder's earth, or sand, or of any " other materials whatsoever in and upon which there shall be, " or be made or impressed, or which will make or impress, the " figure, stamp, resemblance, or similitude of both or either of " the sides or flats of any *gold* or *silver* coin current within this " kingdom, on pain that every such offender and offenders, their " counsellors, procurers, aiders, and abettors, shall be guilty of " HIGH TREASON." But no attainder under this act shall work any corruption of blood, (11) or create any loss of dower, and the prosecution must be commenced within *three months* after the offence committed.

(a) *Rex v. Jarvice*,  
1 Burr. 148.  
*Rex v. Pemberton*,  
2 Burr. 1037.  
Add. P. L. 149.  
(b) *Cro. Car.*  
Comp. 6 Edit.  
215.

† *Sect. 64.* It is said, that in an indictment on this statute, every thing necessary to shew that the defendant is not within the exceptions must be negatively averred; (a) and the most approved precedents are certainly in that form; (b) but it is not necessary for the prosecutor strictly to prove these negative facts, (c) for it is incumbent on the defendant to prove the affirmative. (d)

(c) *Willis' Case*, October Session, 1791. (d) 2 Burr. 1036.

*Hugh Lennard's case*, 2 Bl. Rep. 822. *Cases in Cro. Law*, 2 Edit. 87.  
See form of indictment, *Cro. Cir. Ass.* 48.

† *Sect. 65.* It has been resolved, that an indictment charging the offender on this branch of the statute with mending a mould, " in and upon which was made and impressed the figure, resemblance, and similitude of one of the sides, *to wit*, the head side " of the lawful silver current coin of the kingdom called a shilling, &c." is sufficiently supported by evidence of mending a mould, which has only the resemblance of a *shilling* inverted, *viz.* the convex parts of the shilling being concave in the mould; the head or profile being turned the contrary way of the coin; and all the letters of the inscription reversed; for although this is an instrument which would rather *make and impress* the resemblance of the current coin than an instrument on which the same is *made and impressed*; yet as the *convexities* of the current coin form the *concavities* of the mould, (e) it is an instrument on which there is *made and impressed* the *stamp* of one of the sides of the silver coin. But it seems to be agreed, that it would be more accurate to describe it as a mould that would *make and impress* the similitude, &c.; for the statute clearly distinguishes between such as will *make and impress* the similitude, &c. as " matrix, " die, and mould," and such on which the same may be *made and impressed*, as a puncheon, counter-puncheon, or pattern.

(e) See *Ridgeley's Case*, *Cases in Crown Law*, 2 Edit. 174, for the difference between the *puncheon* and *counter-puncheon*.

(f) By Lord Hardwicke in *Sutton's Case*, *Easter*, 10 Geo. 2. B. R. II. 371.

† *Sect. 66.* But it has been doubted, (f) whether an iron stamp which will make and impress only part of one side of the current coin, as one of the *sceptres* on a half-guinea, is HIGH TREASON within this act. (g)

(g) This is now provided for by 15 Geo. 2. c. 28. See post, s. 82.

† *Sect.*

(11) But see the case of Sir S. Lovel, 1 Salk. 85.

† Sect. 67. It has also been resolved, that an instrument on which there is the outline only of the profile on the current coin, and no marginal letters, is a *puncheon* within the meaning of this act; although such an instrument may be used for other purposes, as making seals, buttons, medals, and other things of the like nature; for it is sufficiently complete to make an old shilling or a base shilling current.

Rowland  
Ridgelay's  
Case, Cases in  
Crown Law,  
2 Edit. 174.

† Sect. 68. By 8 & 9 Will. 3. c. 26. s. 1. it is further enacted, "That no smith, engraver, founder, or other person whatsoever (other than and except the persons employed in the mint, &c. &c.) shall knowingly make or mend, or begin or proceed to make or mend, or assist in the making or mending of any edger or edging tool, instrument, or engine, not of common use in any trade, but contrived for marking of money round the edges with letters, grainings, or other marks or figures resembling those on the edges of money coined in his majesty's mint; nor any press for coinage; nor any cutting engine for cutting round blanks, by force of a screw, out of flatted bars of gold, silver, or other metal; on pain that every such offender or offenders, their counsellors, procurers, aiders, and abettors, shall be guilty of HIGH TREASON." But no attainder under this act shall work any corruption of blood, or loss of dower.—And by 7 Ann. c. 25. s. 2. "The prosecution for making or mending, or beginning or proceeding to make or mend any coining tool or instrument herein prohibited, or by marking of money round the edges with letters or grainings, may be commenced at any time within *six months* after such offence committed."

To make or mend any tool or instrument for graving money round the edges like the current coin, is HIGH TREASON.

† Sect. 69. It has been determined by a majority of the judges, that a *press* of the same sort as that which is used in the mint for coinage, and proper to be made use of for coining guineas, shillings, and *louis-d'ors*, or any other less pieces, but not large enough for coining crowns or half-crowns, and which is proper to be made use of for making medals, dial-plates for watches, buttons, and several other things, and is like those presses in many tradesmen's shops for the purpose of making watch keys, watch chains, cane heads, &c. is not a tool or instrument the making or mending of which will amount to HIGH TREASON, if it clearly appear that the person in whose custody it is found intended to make use of it only in coining *louis-d'ors*, and not any of the current coin of this kingdom.

Case of John  
Bell, Foster's  
Crown Law,  
3 Edit. p. 430.

† Sect. 70. By 8 & 9 Will. 3. c. 26. s. 6. "No smith, engraver, founder, or other person or persons whatsoever (other than and except the persons employed in the mint, and for the use and service of the mint, or persons lawfully authorised by the commissioners of the treasury, or lord high treasurer for the time being), shall knowingly buy or sell, hide or conceal, or, without lawful authority, or sufficient excuse for that purpose, knowingly have in his, her, or their house, custody, or possession, any such puncheon, counter-puncheon, matrix, stamp, dye, edger, cutting engine, or other tool or instrument before mentioned, on pain that any such offender or offenders, their counsellors,

To hide, conceal, or have in custody, any coining tool or instrument is HIGH TREASON.

sellors,

“sellors, procurers, aiders, and abettors, shall be adjudged guilty of HIGH TREASON.” But no attainder under this act shall work any corruption of blood, or loss of dower; and the prosecution must be commenced within *three months* after such offence committed.

(a) Ante,  
sect. 63.

(b) *Rex v. Lennard*, 2 Bl. Rep. 807.

† *Sect. 71.* It is observable, that the words “*pattern*” and “*mould*” are expressly mentioned among the articles enumerated in the first section of this act (a), but that they are omitted in this clause of it. It has, however, been determined (b), that a person may be indicted under this clause of the act for having feloniously and traitorously in his custody and possession a *mould* made of lead, on which is made and impressed the figure of the current coin; for that a *mould* is comprised under the general words of this clause, “other tool or instrument;” and therefore having the custody thereof without lawful authority or excuse, will amount to the crime of HIGH TREASON.

*Rex v. Lennard*, 2 Bl. Rep. 809.

† *Sect. 72.* It has also been determined, that as a *mould* is expressly mentioned by name in the first clause of the statute, with respect to the making or mending, an indictment for having the possession of a *mould* is good, without averring it to be “a tool or instrument” within this clause of the act.

The case of John Bell, Foster's Crown Law, 3 Edit. p. 430.

† *Sect. 73.* It has also been determined, that “a press for coinage” being mentioned among the tools and instruments enumerated in the first clause of the statute, is also within this clause of the statute “other tool or instrument.”

Case of John Bell, Foster's Crown Law, 3 Edit. 430.

† *Sect. 74.* It has also been determined, that if a press of the same sort as those used in the mint, and proper to be made use of in coining guineas, shillings, and *louis-d'ors*, or other less pieces, but not large enough for coining crowns or half-crowns, be found in the possession of a person, his intending to make use of it only in coining *louis-d'ors*, and not the current coin of the kingdom, is “a sufficient excuse” for his having such a press in his custody.

*Rex v. Sutton*, 2 Stra. 1074. B. R. H. 370.

† *Sect. 75.* It is said, that it is the *intent* with which the person has these instruments in his custody that creates the *offence*, and therefore it has been determined, that a person having in his possession two iron stamps, with intent to impress the sceptres on sixpences, and to colour and pass them off for half-guineas, is indictable as a misdemeanor at common law.

To convey any tool or instrument out of the king's mint, which is there used for the purpose of coining, is HIGH TREASON.

† *Sect. 76.* By 8 & 9 Will. 3. c. 26. s. 2. “If any person or persons whatsoever shall, without lawful authority for that purpose, willingly or knowingly convey, or assist in conveying out of his majesty's mint, any puncheon, counter-puncheon, matrix, dye, stamp, edger, cutting engine, press, or other tool, engine, or instrument, used for or about the coining of monies there, or any useful parts of such tools or instruments, the said person and persons so offending, their counsellors, procurers, aiders, or abettors, as also all and every person and persons knowingly receiving, hiding, or concealing the same, shall be adjudged guilty of HIGH TREASON.” But no attainder under this act shall

shall work corruption of blood or loss of dower: and the prosecution must be commenced within *three months* after the offence committed.

† *Sect. 77.* By 8 & 9 Will. 3. c. 26. s. 3. “ If any person or persons (other than the persons employed in his majesty’s mint or mints, or such as have authority from the commissioners of the treasury, or the lord high treasurer for the time being), shall mark on the edges any the current coin of this kingdom; or if any person or persons whatsoever shall mark on the edges of any of the diminished coin of this kingdom, or any counterfeit coin resembling the coin of this kingdom, with letters or grainings, or other marks or figures like unto those on the edges of money coined in his majesty’s mint, every such offender, his counsellors, procurers, aiders, and abettors, shall be adjudged guilty of HIGH TREASON.” But no attainder shall work corruption of blood or loss of dower; and the prosecution must be commenced within *three months* after the offence committed.

To mark the edges of the diminished coin, or any counterfeit coin, with letters or grainings, &c. is HIGH TREASON.

† *Sect. 78.* By 8 & 9 Will. 3. c. 26. s. 4. “ If any person or persons whatsoever shall colour, gild, or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin resembling any the current coin of this kingdom, or any round blanks of base metal, or of coarse gold or coarse silver, of a fit size and figure to be coined into counterfeit milled money, resembling any the gold or silver coin of this kingdom; or if any person or persons shall gild over any silver blanks of a fit size and figure to be coined into pieces resembling the current gold coin of this kingdom, all and every such person and persons so offending, their counsellors, procurers, aiders, and abettors, shall be guilty of HIGH TREASON.” But no attainder for this offence shall work corruption of blood, or loss of dower; and the prosecution must be commenced within *three months* after the offence committed.

To colour, gild, or wash any metal so as to make it resemble the current coin, is HIGH TREASON.

† *Sect. 79.* It has been resolved, that if the colour of silver be produced by melting a small portion of good silver with a large portion of base metal, and throwing it, after it has been cut into round blanks, into *aqua fortis*, and thereby drawing to the surface whatever silver there is in the composition, and making it assume the colour and appearance of real silver, is “ a colouring with a wash and materials” within the meaning of the statute.

*Rex v. Lacy and Parker, Cases Cro. Law, 2 Edit. 140.*

† *Sect. 80.* It seems also that a count on this clause of the statute, and a count on the statute 25 Edw. 3. c. 2. (a) ought not to be introduced into the same indictment.

*Harris and Minion’s Case, Cases in Cro. Law, 126. (a) Ante, s. 54.*

† *Sect. 81.* It is said, that the money thus counterfeited must resemble the true and lawful coin; but it has been determined, that a counterfeit shilling or sixpence, although they are quite smooth (12), and no impression of any sort or kind discernible upon the

*5 Bac. Abr. 129. 1 Hale, 184. 215.*

(12) Whether the counterfeit resembles the current coin, is, it is apprehended, a question of *fact*. At the time of the above decision, the circulating

silver coin, from long wear, had, in many instances, entirely lost all traces of the original impression, so that a round silver blank did then resemble the current

(b) Welch's Case, Cases Cro. Law, 293.

the surface of them, are sufficiently resembling the silver coin of this kingdom to make the offender guilty within the meaning of the act (b).

To alter a *shilling* or a *sixpence*, whether legal or counterfeited, with intent to make the shilling resemble a guinea, or the sixpence a half-guinea, is HIGH TREASON.

† Sect. 82. By the 15 Geo. 2. c. 28. "If any person whatsoever shall wash, gild, or colour, any of the lawful silver coin called a *shilling* or a *sixpence*, or any counterfeit or false shilling or sixpence; or add to or alter the impression, or any part of the impression, of either side of such lawful or counterfeit shilling or sixpence, with intent to make such shilling resemble or look like or pass for a piece of lawful gold coin called a *guinea*, or with intent to make such sixpence resemble or look like or pass for a piece of lawful gold coin called a *half-guinea*, the person or persons so offending in any of the matters aforesaid, their counsellors, aiders, abettors, and procurers, shall be adjudged to be guilty of HIGH TREASON." But the blood of the heirs of such offenders shall not be thereby corrupted, nor shall his wife thereby forfeit or lose her dower.

To alter a *halfpenny* or a *farthing*, with intent to make the halfpenny pass for a *shilling*, or the farthing pass for a *sixpence*, is HIGH TREASON.

† Sect. 83. By 15 Geo. 2. c. 28. s. 1. "If any person whatsoever shall file, or any wise alter, wash, or colour any of the brass monies called *half-pennies* or *farthings*, or add to or alter the impression or any part of the impression of either side of an halfpenny or farthing, with intent to make an halfpenny resemble or look like or pass for a lawful shilling; or with intent to make a farthing resemble or look like or pass for a lawful sixpence; the person or persons so offending in any of the matters aforesaid, their counsellors, aiders, abettors, and procurers, shall be adjudged guilty of HIGH TREASON." But the blood of the heirs of such offenders shall not be thereby corrupted, nor shall his wife thereby forfeit or lose her dower.

Sect. 84. As to THE SECOND BRANCH, concerning the bringing false money into the realm, the following particulars are observable.

1 Hale, 225.  
228, 229. 317.  
Sum. 21.  
S. P. C. 3.  
Foster, 227.

Sect. 85. FIRST, That the money so brought must be counterfeited according to the similitude of English money. But by 1 & 2 Phil. & Mar. c. 11. it is made high treason "to bring into the realm money counterfeited according to the similitude of foreign coin current here, to the intent to merchandize therein."

Sect. 86. SECONDLY, That it must be brought by one who knows it to be false.

1 Hale, 225,  
226. 317.  
3 H. 7. 10.  
S. P. C. 3.  
3 Inst. 18.  
Sum. 12.

Sect. 87. THIRDLY, That it must be brought from a foreign nation, and not from *Ireland* or other place subject to the crown of *England*; for though to some purposes they be distinct from the realm of *England*, and consequently money brought from thence may, within the letter of the statute, be said to be brought into the

current silver coin. But it is apprehended, that in the present state of the silver coinage, when, upon all the coin, the mint impressions are distinct and sharp, a round blank could not be said to resemble the current coin. See also Varley's case (*ante*, p.

20.) where marking a hammered piece of gold, *not round*, with the impression of a half-guinea, was held not to be treason, because the offence was not complete, that is, the likeness was not completed. See the case of P. and J. Welsh, (1 E. P. C. 164.)

the realm, yet inasmuch as the counterfeiting is punishable there by the laws of our king, as much as in *England*, the bringing money from such places has been construed to be no more within the act than if they were actually in *England*. B. Treas. 10.  
Dalt. 89. f. 225.

*Sect. 88. FOURTHLY*, That the bare uttering of such money here, by one who brought it not over, is not within this branch. But by force of an ancient statute, if false money be found in the hands of a suspicious person, he may be arrested till he have found his warrant. Sum. 21.  
3 Inst. 18. c. 18.  
s. 4.

*Sect. 89. FIFTHLY*, That it is not necessary that such false money be actually paid away or merchandized withal, for the words are, “to merchandize or make payment,” &c. which only import an *intention* to do so, and are fully satisfied whether the act intended be performed or not. But *quære*, because both *Coke* (a) and *Hale* (b) seem to hold otherwise. However it is clear, that bringing over money counterfeited according to the similitude of foreign coin is treason within 1 & 2 Phil. & Mar. c. 11. Sum. 21.  
(a) 3 Inst. 18.  
(b) 1 Hale, 229.

*Sect. 90.* Also in the said statute of 25 Edw. 3. c. 2. there is this clause, “And because that many other like cases of treason may happen in time to come which a man cannot think nor declare at this present time, it is accorded, that if any other case of supposed treason, which is not above specified, doth happen before any justices, the justices shall tarry without any going to judgment of the treason, till the cause be shewed and declared before the king and his parliament, whether it ought to be judged treason or other felony.”

*Sect. 91.* By virtue of this clause, many offences which are not high treason within this statute, as the murder of an ambassador, &c. were declared by the parliament to be high treason. But these and all other such like declarations are made void by 1 Mary, c. 1. And it seems that the parliament have no such power at this day by virtue of the said clause, inasmuch as the said statute of 1 Mary expressly enacts, “That no offence shall be deemed high treason, but only such as is declared and expressed to be so by 25 Edw. 3.” and takes no notice of the said clause relating to the parliament. 1 Hale, 308.  
3 Inst. 8.  
12 Co. 16.

And now we are come to offences which, besides those already mentioned respecting THE COIN, have been made HIGH TREASON since the said statute of 1 Mary, *viz.*

I. Offences in upholding or favouring the power of the pope.  
—II. Offences against the Protestant succession.—III. Offences of corresponding with rebels or enemies.

I. Offences in upholding or favouring the power of the pope seem reducible to the following heads: FIRST, Extolling the pope's power. SECONDLY, Putting in ure Popish bulls. THIRDLY, Perverting others, or being perverted to Popery. FOURTHLY, Receiving Popish orders or education in Popish seminaries,



seminaries, and not submitting, &c. **FIFTHLY**, Refusing a second tender of the oaths.

And **FIRST**, The offence of extolling the pope's power.

To maintain by advice, writing, or speaking, the authority of the see of Rome, is **HIGH TREASON**. 1 Hale, 331, 332. Prin. P. L. 144.

*Sect. 92.* By 5 Eliz. c. 1. s. 2. 10. it is enacted, " That if any person within the queen's dominions shall by writing, cyphering, printing, preaching, or teaching, deed or act, advisedly and wittingly hold or stand with to extol, set forth, maintain, or defend the authority, jurisdiction, or power of the bishop of Rome, or of his see, heretofore claimed in this realm, or by any speech, open deed or act, advisedly or wittingly attribute any such authority or pre-eminence to the see of Rome, he shall be guilty of a *premunire* by the first offence, and of **HIGH TREASON** by the second; but without corruption of blood or loss of dower."

Dyer, 282.  
Jenk. Cent. 4.  
c. 29.  
9 Co. 59.  
7 Co. 1.  
2 Keb. 502.

*Sect. 93.* It has been holden, That he who, knowing the effect of a Look written beyond sea, brings it over and secretly sells it; and also, That he who, by report hearing the contents thereof, commends it; and also, That he who, knowing its contents, secretly conveys it to a friend, with an intent to pervert him, is in danger of the statute: and it has been resolved, That he who, having read the book, does afterwards, in discoursing of it, allow it to be good; and also, That whoever writes or prints such a book, and after publishes it, is clearly guilty: but it is said, That he who, having heard of the contents, barely buys and reads the book, is not within the statute.

Two of the judges dissented from this opinion, Sav. 46.

*Sect. 94.* It has also been holden, That if one who is convicted and condemned for an offence of this nature, being afterwards demanded by the judges, whether he be still of the same opinion? answer that he is, he is guilty of high treason, as having advisedly maintained the pope's power a second time.

**SECONDLY**, The offence of putting in ure a Popish bull.

To put in ure any bull or instrument of absolution, is misprision of **TREASON**. Prin. P. L. 144.

*Sect. 95.* By 13 Eliz. c. 2. s. 2. 3. " If any within the queen's dominions shall put in ure any bull or instrument of absolution or reconciliation obtained from the see of Rome, or shall take upon him by colour thereof to absolve or reconcile any person, or to grant or promise any absolution or reconciliation, or shall willingly receive any such absolution or reconciliation, or shall obtain from the see of Rome any bull or writing whatsoever, or publish, or any ways put the same in ure, he is guilty of high treason. And by s. 4. accessories after the offence incur a *premunire*. And by s. 5, 6. Those who within six weeks disclose not an offer of such bulls, &c. to some privy counsel-  
lor, &c. are guilty of a misprision of treason."

**THIRDLY**, The offence of perverting others, or being perverted to Popery.

To be reconciled, or to endeavour to reconcile others

*Sect. 96.* By 23 Eliz. c. 1. s. 2. & 3 Jac. 1. c. 4. s. 22, 23. it is enacted, " That if any one shall pretend to have power, or shall by any ways or means put in practice to withdraw a sub-  
ject

“ject from his natural obedience to the king, or to withdraw  
 “them for that intent to the Romish religion, or to move to pro-  
 “mise any obedience to any foreign power, or to do any overt  
 “act to that intent, or to reconcile one to the *see of Rome*; and  
 “if any person shall by any means be willingly withdrawn, or  
 “promise obedience as aforesaid; he is guilty of HIGH TREASON.”

to the *see of Rome*, is HIGH TREASON.  
 1 Hale, 337, 338.  
 11 Mod. 56.  
 114.  
 Rex. v. Bolton,  
 Mich. 26 G. 3. Form of indictment, Cro. Cir. 573.

*Sect. 97.* But by 3 Jac. 1. c. 4. “If any person who is recon-  
 “ciled to the *see of Rome* beyond the seas, return into the realm  
 “and submit himself, &c. and take the oaths within six days  
 “after his return, he is excused.”

Cawley, 187.

*Sect. 98.* It seemeth that the bare pretending to such a power, without any farther act in endeavouring to persuade persons from their allegiance, or the bare endeavouring so to persuade them, without any pretence of such a power, is high treason within these acts.

The case of Campion the Jesuit and others, Savil, 3.

FOURTHLY, The offence of receiving Popish orders or education, &c.

*Sect. 99.* By 27 Eliz. c. 2. s. 3. “If any ecclesiastic born in  
 “the queen’s dominions, and ordained or professed by Popish  
 “authority, shall remain in the queen’s dominions, or come from  
 “beyond sea, and not submit to some bishop or justice of peace  
 “within three days, and take the oaths, &c. he shall be guilty of  
 “HIGH TREASON.”

Popish priests not taking the oaths are guilty of HIGH TREASON.  
 Hale, 336, 337.

*Sect. 100.* By 27 Eliz. c. 2. s. 15. “If any subject, not being  
 “an ecclesiastic, shall not return from a Popish seminary within  
 “six months after a proclamation to that purpose in London, and  
 “submit, &c. within two days, he shall be guilty of HIGH TREASON whenever he shall otherwise return.”

*Sect. 101.* By 27 Eliz. c. 2. s. 13. “If any subject shall know  
 “that any such priest is within the realm, and not discover him  
 “to some justice of peace, &c. within twelve days, he shall be  
 “fined and imprisoned at the queen’s will; and if any justice of  
 “peace, &c. to whom such matter shall be discovered, shall not  
 “give information to some of the privy council, &c. within  
 “twenty-eight days, he shall forfeit two hundred marks.”

In the construction of this statute it hath been resolved,

*Sect. 102. First,* That in an indictment grounded on this statute against a priest remaining here beyond the time limited by the statute, it must be alleged, that he was born in the realm, &c. and also that he was ordained, &c. by authority challenged or pretended from the *see of Rome*, but that there is no need to shew in what place in particular he was born, or whether he were ordained within the realm, or beyond the sea.

Southwell’s Case, Pop. 49.

*Sect. 103. Secondly,* That one in Popish orders, being in a ship in order to go to *Ireland*, and driven by a storm into *England*, and immediately apprehended, is not guilty of high  
 “treason

Rex. v. O’Cullen, Ray, 377.

treason within this act; for his design of going to *Ireland* was prevented, *et nil efficit conatus, nisi sequatur effectus*, and he was forced into *England* by the act of God, and against his will; neither can he be said to remain here within the intent of the statute, because he was compelled to it by reason of the prosecution.

FIFTHLY, The offence of refusing a second tender of the oaths.

Persons saying or hearing private mass, and refusing the oaths, guilty of TREASON. Vide infra, c. 19. See 1 W. & M. c. 8.

Sect. 104. By 5 Eliz. c. 1. s. 11, 12. & 20. "If any person who shall have a charge, cure, or office in the church, or an office or ministry in an ecclesiastical court, or if any person who shall wilfully refuse to observe the rites of the church of *England*, after having been admonished by the ordinary, &c. or that shall say or hear private mass, &c. shall refuse a second tender of the oaths, he shall be guilty of high treason, but "without corruption of blood."

## II. Offences against the Protestant Succession.

Every person who shall be reconciled to, or hold communion with the see of *Rome*, or who shall profess Popery, or marry a Papist, is excluded from ascending THE THRONE of Great Britain; and THE SCEPTRE shall, in such case, pass into the hands of the next Protestant successor.

† Sect. 105. By THE BILL OF RIGHTS, the 1 Will. & Mary, st. 2. c. 2. s. 9. it is recited, That it had been found by experience inconsistent with the safety and welfare of this *Protestant kingdom* to be governed by a Popish prince, or by any KING or QUEEN marrying a Papist; AND ENACTED, "That all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with the see or church of *Rome*, or shall profess the Popish religion, or shall marry a Papist, shall be excluded, and be for ever incapable to inherit, possess, or enjoy THE CROWN and government of this realm and *Ireland*, and the dominions thereunto belonging, or any part of the same; and in all and every such case or cases, THE PEOPLE of these realms shall be and are hereby absolved of their allegiance; and the said CROWN and government shall, from time to time, descend to and be enjoyed by such person or persons, being *Protestants*, as should have inherited and enjoyed the same, in case the person or persons so reconciled, holding communion, or professing or marrying as aforesaid, were naturally dead."

The crown of England limited to the Protestant successors of SOPHIA, the daughter of James the First, after the death of KING WILLIAM and QUEEN ANNE.

† Sect. 106. By THE ACT OF SETTLEMENT, the 12 & 13 Will. 3. c. 2. the princess *Sophia*, electress and duchess dowager of *Hanover*, daughter of *Elizabeth*, late queen of *Bohemia*, who was daughter of KING JAMES THE FIRST, is declared to be next in succession in the *Protestant line* to the crown of Great Britain, after death of his Majesty and the princess *Anne* of *Denmark*, without issue. "PROVIDED ALWAYS, that all and every person and persons who shall or may take or inherit the said crown by virtue of the limitation of this present act, and is, are or shall be reconciled to or hold communion with the see or church of *Rome*, or shall profess the Popish religion, or shall marry a Papist, shall be subject to such incapacities as in the said BILL OF RIGHTS are provided, enacted, and established."

Maliciously, advisedly, and directly to at-

Sect. 107. By 1 Ann. st. 2. c. 17. s. 3. "If any person or persons shall endeavour to deprive or hinder any person who shall

“ shall be the next in succession to THE CROWN for the time being, according to the limitations of the ACT OF SETTLEMENT, and according to the BILL OF RIGHTS, from succeeding to the imperial crown of this realm, and the dominion and territories thereto belonging, according to the limitations in the two before-mentioned acts, and the same maliciously, advisedly, and directly shall attempt by an *overt act* or deed, every such offence shall be adjudged HIGH TREASON.”

tempt, by overt act, to hinder the Protestant succession, is high treason.

*Sect. 108.* By 6 Ann. c. 7. s. 7. “ If any person or persons shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm that THE KING that now is, is not the lawful and rightful KING of these realms, or that THE PRETENDED prince of Wales, or any other person or persons, hath or have any right or title to the same, otherwise than according to THE BILL OF RIGHTS, and the ACT OF SETTLEMENT, and the ACT OF UNION; or that the KINGS or QUEENS of this realm, with and by the authority of parliament, are not able to make laws and statutes of sufficient force and validity to limit and bind THE CROWN, and the descent, limitation, inheritance, and government thereof, any such person or persons shall be guilty of HIGH TREASON (a).”

To maintain or affirm by writing or printing that THE KING is not the rightful monarch, or that parliament cannot limit the descent of the crown, is high treason. See the case of J. Matthews, 9 St. Tr. 15. O. B. Oct. Sep. 1719. (a) See post. that directly to

affirm the same by preaching, teaching, or advised speaking, is a *præsumptio*.

*Sect. 109.* By 13 Will. 3. c. 3. “ If any of the subjects of the crown of *England* shall, within this realm or without, hold, entertain, or keep any intelligence or correspondence in person, or by letters, messages, or otherwise, with THE PRETENDER, or with any person or persons employed by him, knowing such persons to be so employed; or shall, by bill of exchange, or otherwise, remit or pay any sum or sums of money for the use or service of the *said* PRETENDER, knowing such money to be for such use or service; such person so offending shall be guilty of HIGH TREASON.”

To hold any correspondence with THE PRETENDER, or any of either of his sons, or any persons employed by him or them, is HIGH TREASON.

† *Sect. 110.* By 17 Geo. 2. c. 39. the statute of 13 Will. 3. c. 3. is extended to the eldest or any other son or sons of the *said* PRETENDER, or to any or either of them; and “ if the eldest, or any other son or sons of the *said* PRETENDER (1) shall land or attempt to land, or shall be found in *Great Britain* or *Ireland*, or any of the dominions or territories belonging to the crown of Great Britain, or shall be found on board any ship, vessel, or boat, being so on board with intent to land in *Great Britain* or *Ireland*, or any of the dominions or territories afore-  
“ said

If any or either of the sons of THE PRETENDER shall land, or attempt to land in *Great Britain* or *Ireland*, or any of the dominions thereof, they stand attainted of HIGH TREASON.

(1) James the Second married a princess of the House of *Modena*, and died at *St. Germain* on the 17th September, 1707, leaving one son *James Francis*, the pretended Prince of Wales here alluded to. *James Francis* married *Maria Clementina Sobiesky*, grand-daughter to the king of Poland, and died in the year 1765, leaving two sons, viz. *Charles Edward Lewis Casimir Stuart*, created DUKE OF ALBANY, and *Henry Benedict Stuart*, created

CARDINAL OF YORK. The Count married a princess of *Stolberg*, in Germany, and died at Rome on the 31st December, 1788, leaving only a natural daughter, created Duchess of Albany. The Cardinal was born at Rome on the 6th March, 1725, and died at the same place, 1805, without issue. By his death the family of Stuart became extinct.

“said, he and they respectively shall, by this act, be adjudged  
“*attainted* of HIGH TREASON.”

### III. *Offence of Corresponding with Rebels or Enemies.*

If any officer or soldier shall, either abroad or at sea, hold correspondence with a rebel or enemy, he is guilty of HIGH TREASON. 1 Hale, 339. (a) *Sed qu.* if this statute is not expired.

All crimes and offences that are HIGH TREASON by the laws of England, and no other, shall be HIGH TREASON in Scotland.

† *Sect.* 111. By 2 & 3 Ann. c. 20, “if any officer or soldier  
“in his majesty’s army shall, either upon land out of *England*,  
“or upon sea, hold correspondence with any rebel or enemy, or  
“give them advice or intelligence either by letters, messages,  
“signs, or tokens, or any manner of way whatsoever, or shall  
“treat with such rebels or enemies, or enter into any condition  
“with them, without the king’s licence, or licence of the general,  
“lieutenant-general, or chief commander, every person so of-  
“fending, shall be adjudged guilty of HIGH TREASON.” (a)

*Sect.* 115. NOTE, By 7 Ann. c. 21. s. 1, it is enacted, “That  
“such crimes and offences which are HIGH TREASON, or mis-  
“prision of high treason, within *England*, shall be construed,  
“adjudged, and taken to be high treason and misprision of high  
“treason within *Scotland*, and that no crimes or offences shall  
“be high treason or misprision of high treason within *Scotland*,  
“but those that are high treason or misprision of high treason in  
“*England*; and that the crown may issue out commissions of  
“*oyer and terminer* in *Scotland*, under the seal of GREAT BRITAIN,  
“to such persons as the king shall think fit, and that three  
“lords of the justiciary be in the said commission of *oyer* and  
“*terminer*, whereof one to be of the *quorum*, to enquire of, hear,  
“and determine such high treason and misprision of high trea-  
“son in such manner as is used in *ENGLAND*.”

## CHAP. III.

### OFFENCES AGAINST THE KING.

OFFENCES more immediately affecting THE KING are, FIRST, against the bullion. SECONDLY, against the coin. THIRDLY, against the privy council. FOURTHLY, serving a foreign prince. FIFTHLY, injuring the king’s armour.

#### 1. *Offences against Bullion.*

The law respecting bullion is applicable to the following matters: 1. Regulations respecting articles manufactured from bullion. 2. The exportation of bullion. 3. The sale of bullion. 4. The having bullion in possession without being able to account for that possession. 5. Counterfeiting bullion. As to the first point; as to the several laws relative to the manufacturing of articles from bullion, Hawkins has been wholly silent. We therefore subjoin from Mr. East’s Pleas of the Crown, Vol. I. p. 188, the regulations upon this point. “By the statute 28 Ed. 1. s. 3. c. 20: ‘No goldsmith shall make any vessel, jewel, or any other thing of gold or silver, except it be of good and true allay oz. gold, not worse than the touch of Paris

Paris and silver of sterling allay or better: And that the latter should be assayed by the wardens of the Goldsmiths' Company, and marked with the Leopard's Head; and any such made otherwise may be seized; and if he be attainted of the fact, he shall be punished by imprisonment and ransom at the king's pleasure.' The standard of sterling was, that one pound of sterling gold contained 23 carats, 3 grains and a half of fine gold, and half a grain of copper alloy, making together 24 carats of Troy weight. But for many years past, the standard has been fixed at 22 carats of fine gold and two carats of copper. And by the same standard, every pound weight of sterling silver must contain 10 oz. 2 penny-weights of fine silver, and 18 penny-weights of copper alloy, making together twelve ounces. And by the statute of 17 Ed. 4. c. 1. it is provided, That no goldsmith shall sell any gold under the fineness of 18 carats, nor silver under the allay of sterling. By statute 4 Hen. 7. c. 2. all silver fined or parted, shall be made so fine that it may bear 12 penny-weights of allay in a pound weight, and yet be as good or better than sterling. By statute 18 Eliz. c. 15. goldsmiths' wares are required to be not less in fineness than 22 carats of gold, nor of silver less than 11 ounces 2 penny-weights. By statute 8 Wm. 3. c. 8. after the 25th March, 1697, no person shall work or make any manufacture of silver less in fineness than 11 ounces and 10 penny-weights of fine silver in every pound Troy; nor put to sale, exchange, or sell any such, made after that time, (unless it be silver wire or such small things as are not capable of receiving a mark,) until such time as the same shall be marked as therein described. And if the wardens and masters of the said mystery, mark any plate for good contrary to the act, they shall also forfeit the value of the plate so deceitfully marked, to be recovered in the manner prescribed by the act. By statute of 6 Geo. 1. reciting, that it may be requisite for encouraging the several manufactures of wrought plate, to continue both the standard of plate of 11 ounces 10 penny-weights, and also the standard of 11 ounces 2 penny-weights (see statute 18 Eliz. c. 15.) to the pound Troy, enacts, that from the first of June, 1720, all silver vessels of plate, or manufactured of silver, shall not be less in fineness than those respective standards, each to be marked with distinguishing marks; the greater standard with the workman's mark, the mark of the wardens of the Goldsmiths' Company, and with the figure of a lion's head erased, and the figure of the Britannia; and the lesser standard with the workman's mark, that of the wardens of the Goldsmiths' Company, and the figure of a lion passant, and the figure of a leopard's head; and that it shall not be lawful to make any manufactures of silver of a coarser allay than above specified, under the penalties and forfeitures prescribed, by any laws then in force concerning wrought plate.

"The statute 12 Geo. 2. c. 26. reciting several prior statutes for regulating the standards of gold and silver plate, enacts, "That after the 28th day of May, 1739, No goldsmith, silver-

“ smith, or other person, making, trading, or dealing in gold or silver wares, within England, shall work or make, or cause, &c. any gold vessel, plate, or manufacture of gold whatsoever, less in fineness than 22 carats of fine gold in every pound weight Troy; or any silver vessel, &c. less in fineness than 11 ounces 2 penny-weights of fine silver in every pound Troy; nor sell, exchange, or expose to sale, or export out of this kingdom, any gold or silver manufacture, &c. less in fineness than such respective standards, on forfeiture of £10 for every such offence, one moiety to the king, the other to any informer who will sue; and in default of payment, the defendant shall be committed by the court, in which judgment shall be given thereon, to the House of Correction for the county, &c. where convicted, there to be kept to hard labour not exceeding six months, or until payment.” The act contains exceptions of certain small wares, particularly described. By s. 3. Persons (other than the makers or workers thereof) dealing, &c. in gold and silver wares, exporting, selling, or exposing to sale the same, worse than the respective standards, who shall, within fourteen days after notice of the coarseness thereof, discover to the party grieved, or to the master, wardens, or clerk of any of the companies of goldsmiths of the place where such dealer resides, the name and place of abode of the maker or worker thereof, or of the person of whom such dealer really bought the same, and shall produce him if living, so that he may be prosecuted; and if such dealer shall give material evidence against such person, and the judge before whom the trial is had shall, under his hand, on the record certify the same, and also that there did not appear any ground to believe that such dealer, &c. was privy to the fraud; or if such dealer shall, on the trial of any suit or prosecution against himself concerning the premises, prove that he delivered to such maker or worker a sufficient quantity of standard gold or silver to make the said wares, and paid a reasonable price for the fashion thereof, or paid the maker or worker, or other person, a market price for standard gold or silver of that weight, besides a reasonable price for the fashion thereof, then such dealer, &c. shall be discharged from any penalty or forfeiture to be incurred by this act for exporting, selling, or exposing to sale, such coarse gold or silver wares, and from any action, suit, or prosecution for the same. Provided (s. 4.) that such dealer, &c. need not give material evidence, or produce such certificate as aforesaid, in order to indemnify himself from any penalty or forfeiture under this act, unless such trial against such maker, worker, or other person, of whom the said wares were bought, shall be had within four terms after such discovery made, nor unless reasonable notice shall be given to such dealer, &c. of the time of such trial.

By s. 5. after 28th May, 1739, No goldsmith, silversmith, or other person whatsoever, making or selling, trading or dealing, in gold or silver wares, shall sell, exchange, or expose to sale within England, any gold or silver manufactures whatsoever made

made after that time, or export the same out of this kingdom, until such manufacture of gold, (being of the standard of 22 carats of fine gold per pound Troy,) and such manufacture of silver, (being of the standard of 11 ounces 2 penny-weights of fine silver per pound Troy,) shall be marked *with the mark of the worker or maker*, which shall be *the first letters of his christian and surname*, and with the marks of the Goldsmiths' Company in London, viz. *the leopard's head, the lion passant, and a distinct variable mark or letter* to denote the year in which such plate shall be made, or with *the mark of the worker or maker*, and with the marks of the assayer at York, Exeter, Bristol, Chester, Norwich, or Newcastle upon Tyne, or plate (being of the standard of 11 ounces 10 penny-weights of fine silver per pound Troy,) *with the worker or maker's name* as aforesaid, and with these marks of the said company, viz. *the lion's head erased, the figure of a Britannia, and the said mark or letter* to denote the year as aforesaid, or with *the worker or maker's mark, and the marks of one of the said cities or towns*; upon pain of forfeiting £10, half to the crown, and half to any informer who will sue; and for default of payment, the offender shall be committed by the court in which judgment shall be given thereon, to the House of Correction for the county, &c. where convicted, not exceeding six months, to hard labour, or until payment be made of the said forfeiture. By sect. 6. certain wares, by reason of their thinness or smallness, are excepted from being marked. By statute 24 Geo. 3. c. 53. s. 5. (to denote the payment of a certain duty,) over and besides the other legal marks, there is required on the same manufactures, when sent to be assayed and marked, the *mark of the king's head*; on pain of forfeiting, by s. 8. under the like circumstances as are before mentioned in the former act, £50, to be recovered and disposed of as aforesaid, or, in default of payment, to be committed in like manner to the House of Correction, not exceeding one year nor less than six months, or until payment; and also forfeiting the gold or silver manufacture so sold, exchanged, or exposed to sale without such mark, one moiety to the crown, the other to any person who will sue, with the like exceptions as in the former statute. The statute 30 Geo. 3. c. 31. repeals the exceptions in the two last mentioned acts as to the silver wares, and enacts others in lieu thereof.

Lastly, by statute 38 Geo. 3. c. 69. it is enacted, that from and after the first day of October, 1798, it shall be lawful for any goldsmith or other person, making, trading, or dealing in gold wares in Great Britain, to work or make any gold vessel, plate, or manufacture of gold whatsoever, of the standard of 18 carats in every pound weight Troy, and to sell, exchange, or expose to sale, or export the same out of the kingdom. By s. 2. after the said 1st of October, 1798, no person shall sell, exchange, or expose to sale, or export out of the kingdom, any such manufacture of gold made after that time until marked *with a crown*, and the figures 18, instead of the mark of the lion passant,



sant; on forfeiture of £10; which mark is (by s. 3.) to be affixed by the respective Companies of Goldsmiths in London, Edinburgh, Birmingham, and Sheffield, and by the wardens and assayers of gold at York, Exeter, Bristol, Chester, Norwich, and Newcastle upon Tyne. By sect. 4. c. 5. this is not to prevent the making, selling, &c. manufactures of gold of the standard of 22 carats directed by former laws; but not to authorize assaying, or marking with the mark used before the act, any gold manufactures of lower standard than 22 carats per pound Troy.

Hence it appears, that by statute 28 Ed. 1. s. 3. c. 20. all gold manufactures were required to be made of good and true alloy; that is, not worse than the touch of Paris. By statute of 17 Ed. 4. c. 1. gold was not to be manufactured under the fineness of 18 carats in the pound Troy, which was increased to 22 carats by statute 18 Eliz. c. 15. and so continued by the statute of 12 Geo. 2. c. 26. s. 1. in respect of all goods manufactured after the 28th May, 1739. But by the statute 38 Geo. 3. c. 69. s. 1. it was again permitted to be manufactured of the lower standard of 18 carats after the 1st of Oct. 1798.

By statute 12 Geo. 2. c. 26. s. 5. manufactured gold of the standard of 22 carats, shall have, 1. the worker or maker's mark, *viz.* the first letters of his christian and surname. 2. The marks of the Goldsmiths' Company in London, *viz.* the leopard's head, the lion passant, and a distinct variable mark or letter to denote the year in which it was made: or else it shall have, 1. The worker or maker's mark, together with, 2. The marks of the assayer at York and other places named, *i. e.* respectively, according to the parties' place of residence. By the statute 28 Geo. 3. c. 69. s. 1. manufactured gold of the standard of 18 carats shall be marked with a crown and the figures 18, instead of the lion passant. to be fixed by the respective companies of goldsmiths in London, Edinburgh, Birmingham, and Sheffield, and by the wardens and assayers, &c. at York, Exeter, &c. By statutes 28 Ed. 1. s. 3. c. 20. and 17 Ed. 4. c. 1. silver manufactures were to be of true sterling alloy or better, the value of which has been noticed before. By statute 4 Hen. 7. c. 2. the silver was to be made fine enough to bear 12 penny-weights of alloy per pound weight. By statute 18 Eliz. c. 5. the standard was settled at 11 ounces 2 penny-weights to the pound Troy. This by statute 8 W. 3. c. 8. was raised to 11 ounces 10 penny-weights in respect of goods manufactured after the 25th March, 1697. But the statute 6 Geo. 1. c. 11. s. 41. confirmed by the statute 12 Geo. 2. c. 26. s. 5. ratified both the standards again under distinguishing marks, the one from the 1st of June, 1720, the other from the 1st of October, 1798, as after-mentioned. Silver manufactures of sterling alloy were, by the statute 28 Ed. 1. s. 3. c. 20. to be assayed by the wardens of the Goldsmiths' Company, and marked with the leopard's head. The marks were afterwards varied on the change of the standard by the statute 8 Wm. 3. c. 8. and distinguishing marks given by the statute 6 Geo. 1. c. 11. s. 41. upon establishing the two different standards

standards before mentioned. The marks in use since the 28th May, 1739, are fixed by the statute 12 Geo. 2. c. 26. to be for manufactured silver of the standard of 11 ounces 2 penny-weights per pound Troy, the same marks as are before set by the same statute for manufactured gold of 22 carats, and for manufactured silver of the standard of 11 ounces 10 penny-weights; the worker or maker's mark as aforesaid, and these marks of the Goldsmiths' Company in London, *viz.* the lion's head erased, the figure of a Britannia, and a distinct variable mark or letter to denote the year in which it was made, or else with the worker's or maker's mark, and the marks of the assayers at York, Exeter, &c. In addition to the marks above-mentioned, there is another mark, common to both gold and silver manufactures of whatever standard; namely, the mark of the king's head; which, by statute 24 Geo. 3. c. 53. is required in all instances where other marks are necessary, to denote the payment of a certain duty.

The principal offences created by these statutes are the making, working, putting to sale, exchanging, selling, or exporting any gold or silver manufactures of less fineness than the standards respectively fixed at the time by the several acts. Besides the particular penalties and forfeitures inflicted on the delinquents on default of payment, the commitment to the House of Correction, it is to be remembered that the statute of 28 Ed. 1. s. 3. c. 20. is still in force, (*Rex v. Jackson, Cowper, 297.*) which subjects them to a discretionary fine and imprisonment: and though the description of the offence therein is not so large as in the subsequent statutes, yet the penalty of it seems virtually to be adopted in the latter, by general words of reference to former laws. Besides which, I conceive that offenders of this description, fraudulently fixing public and authentic marks on goods of a value inferior to such tokens, are liable to suffer at common law upon an indictment for a cheat.

Joseph Fabian, a working goldsmith, was indicted for falsifying plate, by putting in too much alloy, and then corrupting one of the assay master's servants to help him to the proper marks, with which he stamped his plate; and being convicted, was fined £100, and adjudged to stand three times in the pillory; and was also forejudged of his trade, that he should not use that trade again as a master workman. Such a judgment must have been at common law. (*Fabian's Case, Kelyng. 39.*)

#### *Exportation of Bullion.*

*Sect. 1.* The offence of diminishing the quantity of the bullion of the kingdom has always been thought of very ill consequence (a), as tending to impoverish the nation, and to embarrass trade (b); and therefore, with an eye to these inconveniences, the statute 17 Edw. 3. c. 15. which was never printed (c), made it felony to transport silver, except when wrought into plate, and carried over by great men to serve their houses; and afterwards the exportation thereof was prohibited by many other statutes (d):

(a) See *Court-teen's Case*, Poph. 149.  
 (b) *Hob. 270.*  
 (c) 1 *Roll. Rep.* 299.  
 (d) 4 *Inst.* 66.  
 (c) 3 *Inst.* 92.  
 (d) 27 *Edw.* 3. c. 14.

#### *Sect.*

5 *Rich.* 2. c. 2.  
 2 *Hen.* 4. c. 16.    2 *Hen.* 6. c. 6.    3 *Hen.* 8. c. 1.

**BULLION** and foreign coin, both of silver and gold, may be exported.

**Sect. 2.** But this *general restraint* being found by experience prejudicial to trade, which, by exporting money and bullion to one market, may bring back such goods from another as will more than make up the loss, it is enacted by 15 Car. 2. c. 7. s. 12. "That it shall and may be lawful to and for any person or persons whatsoever, to export out of any port in *England* or *Wales*, in which there is a customer or collector, or out of the town of *Berwick*, all sorts of foreign coin or bullion of gold or silver, first making entry thereof at such custom-house respectively, without paying any duty, custom, poundage, or fee for the same."

No person shall cast ingots of silver in imitation of Spanish bars, on pain of 500*l*.

**Sect. 3.** But this licence to export having been often abused by exporting such silver as, having been coined into English money or wrought into plate, was afterwards melted down into the form of foreign coin or bullion, it is, in order to prevent this mischief, enacted, by the 6 & 7 Will. 3. c. 17. s. 3. "That no person do, or shall presume to cast ingots or bars of silver in imitation of Spanish bars or ingots of silver, nor to stamp any mark or impression upon any ingot or bar in likeness of the Spanish marks or impressions, upon pain that the person herein offending shall, for every such offence, forfeit the silver so cast, and also the sum of FIVE HUNDRED POUNDS; one moiety to his majesty and the other to the informer, to be recovered, with costs of suit, by action of debt, bill, plaint, or information."

But no *molten silver* whatsoever shall be exported, unless first marked at Goldsmiths Hall, or a certificate that no part thereof was of the *silver coin* or the *wrought plate* of the kingdom.

**Sect. 4.** By 6 & 7 Will. 3. c. 17. s. 5. "No goldsmith or other person whatsoever shall transport, or cause to be transported, out of this kingdom of *England* into any parts beyond the seas, any *molten silver* whatsoever, but such only as shall be marked or stamped at GOLDSMITHS HALL by the wardens, some or one of them, belonging to the said company of goldsmiths, which mark or stamp the said wardens are hereby required to provide, and therewith to mark or stamp all such silver as shall be proved before them, or one of them, in such manner as is hereinafter mentioned, to be lawful silver; nor unless a certificate be first had and obtained under the hand of one or more of the said wardens, of oath having been made before him or them by the owner or owners of such *molten silver*, and likewise by one credible witness, that the same is lawful silver, and that no part thereof was (before the same was molten) the *current coin* of this realm, nor *clippings* thereof, nor *plate* wrought within this kingdom; which oath the said wardens, or any one of them, are and is hereby required and authorised to administer; and likewise to make and grant A CERTIFICATE thereof without fee or reward; an entry of which certificate shall be duly made by the said wardens in a book to be kept for that purpose; and in case any person whatsoever, who shall offer any molten silver to be marked, as is aforesaid, shall not prove by his or her oath, and likewise by the oath of one credible witness, that the silver offered to be marked is lawful silver, and that the same was not, before the melting thereof, the *current coin* of the kingdom, nor *clippings* thereof, nor *plate* wrought

“wrought within the same, then, and in every such case, it shall  
 “be lawful to and for the said wardens, or any one of them, to  
 “seize and detain such molten silver so offered to be marked,  
 “until such time as such oath and proof shall be made as is  
 “aforesaid.

*Sect. 5.* By 6 & 7 Will. 3. c. 17. s. 6. “If any person whatso-  
 “ever shall ship, or cause to be shipped, or put on board any  
 “vessel, any molten silver not stamped or marked by the said  
 “wardens, or one of them, and without certificate first obtained  
 “of oath having been made before the said wardens, or one of  
 “them, of the lawfulness of such silver, in manner as is aforesaid  
 “(which certificate shall be shewn to some one of the commis-  
 “sioners of the customs for the time being, before any cocket be  
 “granted for the exporting such molten silver), in such case it  
 “shall and may be lawful to and for any officer or officers of his  
 “majesty’s customs to seize such silver so shipped and put on  
 “board; one moiety to the king, the other to the officer or offi-  
 “cers so seizing the same.”

Molten silver shipped without a certificate, or without being first stamped, is seizable.

*Sect. 6.* By 6 & 7 Will. 3. c. 7. s. 14. “And if any person or  
 “persons enter or ship any bullion allowed by this act to be ex-  
 “ported beyond the seas, other than in the name of the true  
 “owner or proprietor, or *importer*, the exporter thereof shall for-  
 “feit the same, or the full value thereof; one moiety to the king,  
 “and the other moiety to the person who shall seize or discover  
 “the same.”

Bullion exported in any other than the name of the true owner, is seizable.

*Sect. 7.* By 6 & 7 Will. 3. c. 17. s. 13. “In case any seizure  
 “shall happen of any bullion shipped to be exported, and a doubt  
 “arise thereon whether the same be *English* or *foreign bullion*,  
 “the proof shall lie upon the owner, claimer, or exporter of such  
 “bullion that the same is *foreign bullion*, and had not been melted  
 “down in this realm of *England*, dominion of *Wales*, or town of  
 “*Berwick upon Tweed*.”

If, on seizure, a doubt shall arise whether the bullion seized be *English* or *foreign*, the proof shall lie on the exporter.

*Sect. 8.* By 7 & 8 Will. 3. c. 19. s. 6. “No person or persons  
 “whatsoever shall ship or cause to be shipped, or put on board  
 “any vessel or ship whatsoever, any molten silver or bullion  
 “whatsoever, either in bars, ingots, wedges, cakes, pinas, or in  
 “any other form whatsoever, unless a certificate be first had and  
 “obtained from the court of the lord mayor and aldermen of the  
 “city of *London*, oath having been made before the said court  
 “by the owner or owners of such molten silver or bullion, and  
 “likewise by two or more credible witnesses, that the same  
 “molten silver and bullion, and every part and parcel thereof,  
 “was and is foreign bullion, and that no part thereof was (before  
 “the same was molten) the coin of this realm, or the clippings  
 “thereof, nor plate wrought within this kingdom; which oath  
 “the said court of the said lord mayor and aldermen of the city  
 “of *London*, are hereby required and authorised to administer,  
 “and to examine strictly all and every such person or persons as  
 “shall make such oath concerning the premises, and likewise to  
 “make and grant a certificate thereof, as aforesaid, without fee

No person to ship molten silver or bullion without certificate and oath that the same is foreign bullion, and not coined, clipt, &c. in *England*. By 9 & 10 W. 3. c. 28. watches, sword hilts, wrought plate, &c. may be exported, &c.

“ or reward ; which certificate shall also contain and express the  
 “ name and names of the owner or owners of such molten silver  
 “ or bullion, and of the witness or witnesses, and the true weight  
 “ of such molten silver or bullion ; an entry of which certificate  
 “ shall be duly made to the said court, in a book to be kept for  
 “ that purpose ; which certificate shall be shewn to the commis-  
 “ sioners of the customs for the time being, or four of them,  
 “ before any cocket be granted for the exporting such molten  
 “ silver or bullion ; and an entry thereof shall be also duly made  
 “ by the said commissioners of the customs, in a book to be kept  
 “ by them for that purpose.”

Molten silver or  
 bullion shipped  
 without oath,  
 &c. officer may  
 seize, &c.

*Sect. 9.* By 7 & 8 Will. 3. c. 19. s. 7. “ If any person or  
 “ persons whatsoever shall ship, or cause to be shipped or put  
 “ on board any vessel or ship, any molten silver or bullion what-  
 “ soever, as aforesaid, without oath, certificate, and entry, first  
 “ made and obtained, as is before provided ; in every such case  
 “ it shall and may be lawful to and for any officer or officers of  
 “ his majesty’s customs, or any other person or persons, to seize  
 “ such molten silver and bullion so shipped and put on board, as  
 “ forfeited ; one moiety whereof shall be to his majesty, his heirs  
 “ and successors, and the other moiety to the officer and officers,  
 “ or persons so seizing the same ; and the owner or owners,  
 “ proprietor or proprietors of such molten silver or bullion shall  
 “ forfeit double the value of such molten silver or bullion ; one  
 “ moiety whereof shall be to his majesty, and the other moiety to  
 “ the person that shall sue or inform for the same, to be reco-  
 “ vered, with costs of suit, by action of debt, bill, plaint, or in-  
 “ formation, wherein no privilege, protection, or wager of law,  
 “ shall be allowed, nor any more than one imparlance ; and the  
 “ captain or master of such ship or vessel (if the same belong to  
 “ a subject) who shall knowingly permit the said molten silver or  
 “ bullion to be put on board his said ship or vessel, shall forfeit  
 “ to such person or persons as shall sue or inform for the same,  
 “ the sum of two hundred pounds, to be sued for and recovered  
 “ in manner as aforesaid ; and in case the ship or vessel be a  
 “ man of war, or vessel belonging to his majesty, then the captain  
 “ thereof shall forfeit the sum of two hundred pounds to any per-  
 “ son that shall sue for the same as aforesaid, and shall forfeit his  
 “ employment, and be made incapable of any office or employ-  
 “ ment, civil or military.

Master or cap-  
 tain of a ship to  
 forfeit 200*l*.

Penalty on  
 commissioners,  
 &c. granting  
 cocket, &c.

*Sect. 10.* By 7 & 8 Will. 3. c. 19. s. 8. “ If any commissioner  
 “ or commissioners, officer or officers of the customs, shall grant  
 “ any cocket for exporting of any molten silver or bullion  
 “ whatsoever, before such certificate first had as by this act is  
 “ directed, and entry thereof made in a book hereby directed to  
 “ be kept by the commissioners of the customs ; every such com-  
 “ missioner and officer of the customs so offending shall forfeit  
 “ the sum of two hundred pounds, and be made incapable of  
 “ any other office or place of profit or trust whatsoever.

In case of sei-  
 zure of bullion,

*Sect. 11.* By 7 and 8 Will. 3. c. 19. s. 9. “ In case any seizure  
 “ of

“ of any molten silver or bullion shall happen to be made in pursuance and execution of this act, or that any action, bill, plaint, or information, shall be brought for any of the forfeitures or penalties incurred by this act, and a doubt or question shall arise thereon, whether the molten silver or bullion then in question were really and truly foreign bullion, or prohibited to be exported, or otherwise forfeited by this act; in every such case the proof shall lie on the part of the owner, proprietor, or claimer of such molten silver or bullion; and unless the owner, proprietor, or claimer, or the party sued, shall prove that the molten silver or bullion in question was, at the time of the seizure or forfeiture thereof, foreign bullion, and that no part thereof was (before the same was molten) the coin of this realm, nor clippings thereof, nor plate wrought within this kingdom; in every such case, for want of such proof, the molten silver and bullion in question shall be adjudged, deemed, construed, and taken to be molten silver and bullion forfeited by this act, and liable to the penalties before mentioned.”

proof to lie on the owners;

and on failure to be forfeited.

By st. 43 Geo. 3. c. 49. entitled an act to amend so much of the acts of the 6, 7, & 8th of Will. 3. as relates to the exportation of silver bullion, enacts, “ that it shall be lawful for the lord high treasurer, or any three or more of the commissioners of the treasury, to authorize any person to export from Great Britain any molten silver or bullion by licence, under his or their respective hands, &c. without any oath, certificate, or other document whatsoever, now requisite for the lawful shipping or exportation of any such molten silver or bullion.”

Silver and Bullion may be exported by licence from the treasury.

#### *Sale of Bullion.*

*Sect. 12.* By 6 & 7 Will. 3. c. 17. s. 7. “ If any broker or brokers, not being a trading goldsmith or refiner of silver, shall buy or sell any bullion or molten silver, every such person shall suffer, for every such offence, imprisonment for six months, without bail or mainprize.”

No broker not being a goldsmith or refiner shall buy or sell bullion.

#### *Possession of Bullion not accounted for.*

*Sect. 13.* By 6 & 7 Will. 3. c. 17. s. 8. “ It shall and may be lawful to and for one or more of the wardens of the said company of goldsmiths, with any two or more of the court of assistants of the said company, within the compass of the weekly bills of mortality, and to and for any two justices of the peace within any county, city, or town corporate out of the compass of the weekly bills of mortality, to enter into the house, room, or workshop of any person who shall be suspected to be guilty of buying or selling unlawful bullion, and to search for the same; and in case the occupier or occupiers of such house, room, or workshop, shall refuse to permit the said warden and assistants, or justices, to make such search as aforesaid, it shall and may be lawful to such warden and assistants, and justices, with the assistance of a constable, to break open any door, box, trunk, chest, cupboard, or cabinet, in order to search for and discover such bullion as is aforesaid; and in case the person so searching

For the discovery of offenders, one or more of the wardens of the Goldsmiths' Company, with two of the court of assistants, and two justices, may enter any suspected house or workshop, to search for bullion unlawfully concealed.

Persons in whose possession bullion is found, not proving it to be neither coin nor clippings melted, to be imprisoned six months.

“ searching shall at any time find any such unlawful bullion, the  
 “ persons so finding the same are hereby required to seize as well  
 “ such bullion as the person or persons in whose possession the  
 “ same shall be found ; and the said wardens, assistants, and con-  
 “ stables, shall bring him and her before the next justice of the  
 “ peace ; which justice within the weekly bills of mortality, and  
 “ the said two justices without the said bills of mortality, shall and  
 “ may examine the person so brought before him, or found by  
 “ them respectively, upon oath, whether the bullion so found be  
 “ lawful silver, and whether the same was not (before the melting  
 “ thereof) the current coin of this realm, or clippings thereof ;  
 “ and in case the said person so examined shall not prove by his  
 “ or her oath, or by the oath of one credible witness, before the  
 “ said justice and justices respectively, that the bullion so found  
 “ is lawful silver, and that the same was not, before the melting  
 “ thereof, the current coin of this realm, nor clippings thereof,  
 “ then and in such case the said justice or justices respectively  
 “ shall commit the person so examined to prison, and shall secure  
 “ the bullion so found, and shall likewise oblige the persons that  
 “ can give any evidence concerning the same, to enter into a re-  
 “ cognizance to prosecute the said offender and offenders ; and  
 “ in case such offender and offenders in whose possession such  
 “ unlawful bullion shall be found, shall not, upon his, her, or their  
 “ trials on an indictment for melting the current silver coin of  
 “ this realm, prove, by the oath of one credible witness at the  
 “ least, the bullion so found to be lawful silver, and that the same  
 “ was not the current coin of this realm, nor clippings thereof,  
 “ then, and for want of such proof, such offender shall be found  
 “ guilty of the offence contained in such indictment, and shall  
 “ suffer imprisonment for the space of six months, without bail  
 “ or mainprize.”

### *Counterfeiting Bullion.*

To blanch copper for sale, or to buy or sell any heavier than silver and wearing like standard gold, is felony.  
 4 Comm. 98.  
 1 Hale, 214.

*Sect. 14.* By 3 & 9 Will. 3. c. 26. s. 6. made perpetual by 7 Anne, c. 25. s. 3. “ Whoever shall *blanch copper* for sale, or  
 “ mix blanch copper with silver, or knowingly buy or sell, or  
 “ offer to sale blanch copper alone or mixed with silver, and  
 “ shall knowingly or fraudulently buy or sell, or offer to sale, any  
 “ malleable composition or mixture of metals or minerals which  
 “ shall be heavier than silver, and look, and touch, and wear like  
 “ standard gold, but be manifestly worse than standard, shall be  
 “ guilty of FELONY.”

1 Hale, 644.  
 Dyer, 88.

*Sect. 15.* The endeavours of some persons in making use of extraordinary methods for the producing of gold and silver, were found by experience to be so prejudicial to the public, both from the lavish waste of many valuable materials, and also from the ruin of many families, which had been occasioned by such useless expences, that it was thought necessary to put a check to such practices by some severe law, and for that purpose it was made felony by 5 Hen. 4. c. 4. “ to multiply gold or silver, or to use  
 “ the art or craft of multiplication.” And it was holden, that the  
 practising to find out THE PHILOSOPHER’S STONE, by which it is  
 imagined

imagined that all metals may be made gold, was *felony* within this statute: but this restraint having been found to have no other effect upon the unaccountable vanity of those who fancied such attempts to be practicable, but only to send them beyond sea to try their experiments with impunity in other countries, the statute of 5 Hen. 4. was at last wholly repealed by 1 Will. & Mary.

## II. Offences against the Coin.

*Sect. 16.* The coin of *Great Britain* must be made of sterling (a) 15 Edw. 3. or standard metal (a), which, for THE GOLD COIN, at present consists of two carats of copper melted with twenty-two carats of fine gold (b); and for THE SILVER COIN, of eighteen pennyweights of copper melted with eleven ounces and two pennyweights of fine silver (c). It is said, that the king's prerogative does not extend to the alteration of the standard (d); that it is neither safe nor honourable to debase the coin below sterling (e); and that in legitimating even foreign coin, the value of it should be fixed comparatively with our own standard (f); and indeed the legislature has ever appeared anxious to preserve the coin of the realm pure and unadulterated (g).—By a statute 17 Edw. 3. s. 15. which was never printed, the importation of bad money was made felony (h).—By 2 Hen. 6. c. 9. the making of payments in *blanks* which were made of base alloy, was felony.—By 3 Hen. 5. c. 1. the coining or bringing in *galley-halfpence*, *seskins*, or *doydekins*, was felony.—And now, by the 25 Edw. 3. c. 2. and 1 & 2 Philip & Mary, c. 11. it is, as I have shewn in the preceding chapter (i), high treason to bring *false money* into the realm.

*Sect. 17.* By 6 & 7 Will. 3. c. 17. s. 4. for the better preventing the clipping, diminishing, or impairing the current coin of this kingdom, IT IS ENACTED, "That if any person whatsoever shall buy or sell, and knowingly have in his custody or possession, any clippings or filings of the current coin of this kingdom, he shall, for every such offence, forfeit the said clippings or filings, and also the sum of FIVE HUNDRED POUNDS; one moiety to his majesty, and the other to the informer, to be recovered, with costs of suit, by action of debt, bill, plaint, or information; and the offender shall be also branded in the right cheek with a hot iron with the letter R; and, until payment of the said five hundred pounds, shall suffer imprisonment."

To buy or sell clippings or filings of the current coin, incurs a penalty of 500*l.*, branding, and imprisonment till paid.

*Sect. 18.* By 6 & 7 Will. 3. c. 17. s. 2. "If any person or persons whatsoever shall, at any one time or payment, exchange, lend, sell, borrow, or buy, receive or pay, any broad silver money, or silver money unclipped, of the coin of this kingdom, for more in tale, benefit, profit, or advantage, than the same was coined for, and ought by law to go for, be lent, sold for, borrowed or bought, received or paid, shall forfeit the sum of ten pounds for every twenty shillings that shall be so exchanged, lent, sold for, borrowed, or bought, received or paid, and so in proportion for any greater or lesser sum; one moiety thereof to his majesty, and the other moiety to the person who shall sue or inform for the same, to be recovered (with costs

To sell, buy, receive, or pay any silver money for less than coined for, incurs a penalty of ten pounds for every twenty shillings.

- (a) 15 Edw. 3. Cowp. 279.
- (b) Ward's Mathematics, 118.
- (c) 12 Geo. 2. c. 26.
- (d) 2 Inst. 577.
- (e) 1 Hale, 197.
- (f) 1 Bl. Com. 278.
- (g) 13 & 14 Car. 2. c. 31.
- 8 Will. 3. c. 8.
- 6 Geo. 1. c. 11.
- 12 Geo. 2. c. 26.
- 9 Geo. 3. c. 37.
- 14 Geo. 3. c. 42.
- 16 Geo. 3. c. 46.
- 18 Geo. 3. c. 43.
- (h) 2 Inst. 92.
- (i) Antc, p. 26.



“ costs of suit) by action of debt, bill, plaint, or information,  
 “ wherein no privilege, protection, or wager of law shall be al-  
 “ lowed, nor any more than one imparlance.”

To take, receive,  
 pay, or put off  
 any milled  
 money at a  
 lower rate than  
 its denomination  
 imports, is fe-  
 lony.  
 See 6 & 7 Will.  
 3. c. 17. s. 2.

Sect. 19. By 8 & 9 Will. 3. c. 26. s. 6. “ If any person or  
 “ persons shall take, receive, pay, or put off any counterfeit milled  
 “ money, or any milled money whatsoever, unlawfully diminished  
 “ and not cut in pieces, at or for a lower rate or value than the  
 “ same by its denomination doth or shall import, or was coined  
 “ or counterfeited for, all and every such person and persons  
 “ shall be adjudged guilty of felony.—But no attainder shall  
 “ make any corruption of blood to any heir, or any loss of  
 “ dower to the wife of such offender; and no prosecution shall  
 “ be, unless commenced within *three months* after such offence  
 “ committed.”

To buy, sell,  
 pay, receive, or  
 put off *copper*  
*money* for less  
 than their deno-  
 minated value,  
 is felony.

Sect. 20. By 11 Geo. 3. c. 40. “ If any person or persons  
 “ shall buy, sell, take, receive, pay, or put off any counterfeit  
 “ *copper money*, not melted down or cut in pieces, at or for a  
 “ lower rate or value than the same by its denomination doth or  
 “ shall import or was counterfeited for, every such person and  
 “ persons shall be adjudged guilty of felony.”

Wooldridge's  
 Case, Cases in  
 Crown Law,  
 2 Edit. 251.

Sect. 21. It is said, upon the construction of these statutes,  
 that if the act of *putting off* the counterfeited coin be not *finally*  
 completed, it does not amount to the crime described in the sta-  
 tute; and therefore, although one party has agreed to sell, and  
 the other has agreed to buy, yet if the parties be apprehended,  
 and the monies seized while it is counting out, the offence is not  
 completed; for the money is not *put off* until it come into the  
 actual custody and possession of the intended buyer.

To utter or ten-  
 der in payment  
 any false or  
 counterfeit mo-  
 ney knowingly,  
 incurs for the  
 first offence *six*  
*months*, for the  
 second *two*  
*years* imprison-  
 ment, and for  
 the third  
 DEATH.

Sect. 22. By 15 Geo. 2. c. 28. s. 2. “ Whereas the uttering  
 “ of false money, knowing it to be false, is a crime frequently  
 “ committed all over the kingdom, and the offenders therein are  
 “ not deterred, by reason that it is only a misdemeanor, and the  
 “ punishment very often but small, though there be great reason  
 “ to believe that the common utterers of such false money are  
 “ either themselves the coiners, or in confederacy with the coin-  
 “ ers thereof: for preventing whereof, be it hereby further  
 “ enacted, if any person whatsoever shall, after the said 29th day  
 “ of September, utter or tender in payment any false or counter-  
 “ feit money, knowing the same to be false or counterfeit, to any  
 “ person or persons, and shall be thereof convicted, such person  
 “ so offending shall suffer six months imprisonment, and find  
 “ sureties for his or her good behaviour for six months more, to  
 “ be computed from the end of the said first six months; and if  
 “ the same person shall afterwards be convicted a second time  
 “ of the like offence of uttering or tendering in payment any false  
 “ or counterfeit money, knowing the same to be so, such person  
 “ shall for such second offence suffer two years imprisonment,  
 “ and find sureties for his or her good behaviour for two years  
 “ more, to be computed from the end of the said first two years;  
 “ and

“and if the same person shall afterwards offend a third time in uttering or tendering in payment any false or counterfeit money, knowing the same to be so, and shall be convicted of such third offence, he or she shall be and is hereby adjudged to be guilty of felony without benefit of clergy.”—But the blood of the heirs of the offender shall not thereby be corrupted, nor shall his wife thereby lose her dower, and there shall be no prosecution for this offence, unless commenced within *six months* after the offence committed.

*Sect. 23.* By 15 Geo. 2. c. 28. s. 3. “If any person whatsoever shall utter or tender in payment any false or counterfeit money, knowing the same to be false or counterfeit, to any person or persons, and shall either the same day, or within the space of ten days then next, utter or tender in payment any more or other false or counterfeit money, knowing the same to be false or counterfeit, to the same person or persons, or to any other person or persons, or shall at the time of such uttering or tendering have about him or her, in his or her custody, one or more piece or pieces of counterfeit money, besides what was so uttered or tendered, then such person so uttering or tendering the same, shall be deemed and taken to be a common utterer of false money, and being thereof convicted shall suffer a year’s imprisonment, and shall find sureties for his or her good behaviour for two years more, to be computed from the end of the said year; and if any person having been once so convicted as a common utterer of false money, shall afterwards again utter or tender in payment any false or counterfeit money to any person or persons, knowing the same to be false or counterfeit, then such person being thereof convicted, shall for such second offence be and is hereby adjudged to be guilty of felony without benefit of clergy.”—But the blood of the heirs of such offender shall not be corrupted, nor shall his wife lose her dower; and no prosecution shall be by this act, unless commenced within *six months* after the offence committed.

Uttering false money twice within ten days, or having other false money in custody, is for the first offence a year’s imprisonment, for the second death.

*Sect. 24.* By 15 Geo. 2. c. 28. s. 9. “If any person shall be convicted of uttering or tendering any false or counterfeit money as aforesaid, and shall afterwards be guilty of the like offence in any other county or city, the clerk of the assize, or the clerk of the peace for the county or city where such conviction was so had, shall at the request of the prosecutor, or any other on his majesty’s behalf, certify the same by a transcript in a few words, containing the effect and tenor of such conviction; for which certificate two shillings and sixpence, and no more, shall be paid: and such certificate being produced in court, shall be sufficient proof of such former conviction.”

Second offence in another county. Short transcript of former conviction evidence.

*Sect. 25.* By 15 Geo. 2. c. 28. s. 6. “Whereas the coining or counterfeiting of any of the copper money of this kingdom is only a misdemeanor, and the punishment often very small, it is enacted, if any person whatsoever shall make, coin, or counterfeit any brass or copper money commonly called a *halfpenny* or

Coiners of copper money to be imprisoned two years;

“ or a *farthing*, such person offending therein, and his, her, and  
 “ their aiders, abettors, and procurers, being thereof convicted,  
 “ shall suffer two years imprisonment, and find sureties for his or  
 “ her good behaviour for two years more, to be computed from  
 “ the end of the said first two years.”

Now felony to  
 coin copper  
 money by 11 G.  
 3. c. 40. and  
 37 G. 3. c. 126.

*Sect. 26.* But the coining or counterfeiting of the copper monies of this realm, from being punished only as a misdemeanor, continuing greatly to prevail, to the great prejudice of trade, it is enacted by 11 Geo. 3. c. 40. “ That if any person or persons  
 “ shall make, coin, or counterfeit any of the copper monies of  
 “ this realm commonly called a *halfpenny* or a *farthing*, such  
 “ person or persons offending therein, and his, her, or their  
 “ counsellors, aiders, abettors, and procurers, shall be adjudged  
 “ guilty of felony.”

By stat. 37 Geo. 3. c. 126. “ The provisions of the two last-  
 “ mentioned statutes (by name) and all other acts concerning the  
 “ copper monies of this realm called a halfpenny and a farthing,  
 “ or any other copper money of this realm, shall extend to all  
 “ such pieces of copper money as shall be coined and issued by  
 “ order of his majesty, &c. and as shall by royal proclamation be  
 “ ordered to be deemed and taken as current money of this  
 “ realm, as if such pieces had been particularly mentioned in  
 “ such acts respectively.”

It may now be a question whether, under this latter statute, it is not optional to prosecute either for a misdemeanor, as the offence is made by the stat. 15 Geo. 2. or for a felony, as it is made by that of 11 Geo. 3. since the provisions of both statutes are extended to the new copper coinage? And yet such an option, without varying circumstances, is unusual, and incongruous with the general rule of law, that the misdemeanor is merged in the felony. The punishment, however, under the 11 Geo. 3. is only a year's imprisonment; which is founded on the general statute of the 18 Eliz. c. 7. s. 3. (E. P. C. vol. i. p. 102.)

R. v. West and  
 others. O. B.  
 Sept. 1780.

### III. *Offences against the Privy Council.*

Conspiring to  
 murder the king  
 or peer is felony.

*Sect. 27.* By 3 Hen. 7. c. 14. “ If any, sworn servant in THE  
 “ CHEQUER-ROLL of the king's household, under the state of a  
 “ lord, make any confederacy, compassing, conspiracy, or imagi-  
 “ nation with any person, to destroy or murder the king, or any  
 “ lord of this realm, or any other person sworn to the king's  
 “ council, he shall be guilty of felony.”

To wound a  
 privy counsellor  
 in duty is death.

*Sect. 28.* By 9 Ann. c. 16. “ If any person shall attempt to  
 “ kill, assault, strike, or wound any privy counsellor in execution  
 “ of his office, he shall suffer as a felon without clergy.”

### IV. *Serving a Foreign Prince, or State, and deserting his Service.*

Persons going  
 abroad to serve  
 a foreign prince  
 without taking

*Sect. 29.* By 3 Jac. 1. c. 4. s. 18, 19. “ Every subject who  
 “ shall go out of the realm to serve any foreign prince or state,  
 “ or shall pass over the seas, and there voluntarily serve any such  
 “ foreign

“ foreign prince or state, not having before his going taken the oath of obedience (a), shall suffer as a felon.”

felony. 3 Inst. 80. Dalt. c. 107. Cawl. 182. (a) N. B. This oath of obedience is taken away by 1 Will. and Mary, sess. 1. c. 8. s. 2. and the new oaths of allegiance and supremacy enjoined in the room thereof. Vide c. 20. s. 41.

the oaths of allegiance, &c. are guilty of

Sect. 30. And by 3 Jac. 1. c. 4. s. 20, 21. “ If any gentleman, or person of higher degree, or any person who hath born any office or charge in camp or army, shall go out of the realm to serve such *foreign prince*, &c. without being bound with two sureties in a bond, conditioned, that he shall not be reconciled to the *see of Rome*, nor enter into any *conspiracy* against the king, he shall be a felon.”

By statute of 59 Geo. 3. c. 69. repealing former statutes on this subject enacts, “ If any natural-born subject of his Majesty, his heirs and successors, without the leave or licence of his Majesty, his heirs or successors, for that purpose first had and obtained, under the sign manual of his Majesty, his heirs or successors, or signified by order in council, or by proclamation of his Majesty, his heirs or successors, shall take or accept, or shall agree to take or accept any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be employed or shall serve in any warlike or military operation in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of his Majesty shall, without such leave or licence as aforesaid, accept, or agree to take or accept, any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a sailor or marine, or to be employed, or engaged, or shall serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped or intended to be used for any warlike purpose, in the service of or for or under or in aid of any foreign power, prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people; or if any natural-born subject of his Majesty shall, without such leave and licence as aforesaid, engage, contract, or agree to go, or shall go to any foreign state, country, colony, province, or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or in the “ service

“ service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor, or marine, in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the united kingdom of Great Britain and Ireland, or in any part of his Majesty’s dominions elsewhere, or in any country, colony, settlement, island, or place belonging to or subject to his Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in the land or sea service, for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of government as aforesaid, or to go or to agree to go or embark from any of his Majesty’s dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.”

Offences committed out of the kingdom, by s. 9. may be tried in the court of King’s Bench at Westminster, and the venue laid at Westminster in the county of Middlesex.

### *Desertion.*

By 18 Hen. 6. c. 19. it is enacted, “ That soldiers retained in the manner prescribed by the act, departing from their captains without licence, shall be guilty of felony.” But this statute is now of little use, because the method of retaining soldiers therein referred to is disused (1).

† Sect. 2. However by 7 Hen. 7. c. 1. and 3 Hen. 8. c. 5. still in force, “ If any soldier, being no captain immediately retained with the king, who shall be in wages and retained, or take any prest to serve the king upon the sea, or upon the land beyond the sea, depart out of the king’s service, without licence of his captain, he shall suffer as a felon, without the benefit

(1) At the time of passing this statute, it was a common mode of raising men for the king’s service, for any landholder, or military adventurer, who had influence with others, to contract by

indenture with the king, to serve him, for a certain time, with a stipulated number of men, in any enterprise which the king might then have in hand.

“benefit of the clergy. And all justices of peace in every shire in *England*, where any such offenders be taken, have power to enquire of the said offences, and the same to hear and determine, as they may do of felony, trespasses, and of other offences expressed in the king’s commission to them made, as though the said offences were done in the same shire.”

† *Sect. 3.* And by 2 Edw. 6. c. 2. “If any soldier serving the king in his wars, in any of his dominions, or on the seas, or beyond the seas, or in *Scotland*, depart without licence of the lieutenant, or admiral, or captain, &c. with booty, or otherwise, being in the enemy’s country, or elsewhere in the king’s service, or out of any garrison where he shall be appointed to serve, he shall be adjudged a felon, and excluded from his clergy; and the justices of every shire where such offender shall be taken, may enquire of and determine the offence, &c.”

† *Sect. 4.* By 1 Geo. 1. st. 2. c. 47. it is enacted, “That if any person or persons whatsoever (other than such as are or shall be enlisted as soldiers, against whom sufficient remedy is already provided by law) shall, in *Great Britain* or *Ireland*, or the isles of *Jersey* or *Guernsey*, by words or other means whatsoever, directly or indirectly, persuade or procure any soldier or soldiers in the service of his majesty, his heirs or successors, to desert or leave such service, or shall go about and endeavour in manner aforesaid, to persuade, prevail on, or procure such soldier or soldiers to desert or leave such service as aforesaid, every such person or persons so offending as aforesaid, and being thereof lawfully convicted, shall, for every such offence, forfeit to his majesty, his heirs or successors, or to any other person or persons who shall sue for the same, the sum of forty pounds, to be recovered by bill, plaint, or information, in any of his majesty’s courts of record at *Westminster*, wherein no essoin, protection, or wager of law shall be allowed; and if it shall happen that any such offender so convicted as aforesaid, hath not any goods and chattels, lands or tenements, to the value of forty pounds, to pay and satisfy the same, or that from the circumstances and heinousness of the crime it shall be thought proper and convenient, the Court, before which the said conviction shall be made, as aforesaid, shall award the said offender to prison, there to remain for any time not exceeding six months, without bail or mainprize, and also to stand in the pillory for the space of one hour, in some market-town next adjoining to the place where the offence was committed, in open market there, or in the market-town itself where the said offence was committed.”

Persons persuading soldiers to desert, shall forfeit 40l.

And not sufficient to pay it, to be imprisoned six months without bail,

and stand in the pillory.

† *Sect. 5.* By 1 Geo. 1. st. 2. c. 47. s. 2. it is provided, “That no such action shall be brought, or prosecution carried on, by virtue of this act, unless the same be commenced within six months after the offence committed.” (1)

Prosecution in six months.

## VII.

(1) There is an act of Parliament passed annually for the regulation, pay, and discipline of the army, which is usually called the Mutiny Act.

Seld. Ja. Angl.  
c. 8.  
67.

enlarging his incroachments, and in this king's reign began to send his legates hither; and prevailed at first with *Henry the First*, and afterwards with *King John*, to give up the donation of bishoprics; and in the time of *King Stephen*, gained the prerogative of appeals, and in the time of *Henry the Second* exempted all clerks from the secular power.

Seld. Epinomis,  
c. 8.  
Davis, 91.

*Sect. 8.* Indeed this king did at first strenuously withstand these innovations, and abolished most of them by THE CONSTITUTIONS OF CLARENDON: but upon the death of *Becket*, who, for having violently opposed the king, was slain by some of his servants, THE POPE got such an advantage over the king, that he was never after able effectually to execute those laws.

*Sect. 9.* And not long after this, by a general excommunication of the king and people, for several years, because they would not suffer an archbishop to be imposed upon them, *King John* was reduced to such straits, that he was obliged to surrender his kingdoms to THE POPE, and to receive them again, to hold of him for the rent of a thousand marks.

2 Inst. 584.  
Davis, 95.

*Sect. 10.* And in the following reign of *Henry the Third*, partly from the profits of our best church benefices, which were generally given to *Italians*, and others residing at the court of *Rome*, and partly from the taxes imposed by THE POPE, there went yearly out of the kingdom seventy thousand pounds sterling.

2 Inst. 530.

*Sect. 11.* The nation, being under this necessity, was obliged to provide for the prerogative of the prince and the liberties of the people by many strict laws. And in the reign of *Edward the First*, religious houses were prohibited, under high penalties, to send any thing to their superiors beyond seas; and it was declared by parliament, that the pope's taking upon him to dispose of English benefices to aliens, was an incroachment not to be endured. And soon after these grievances produced those more severe laws against the above-mentioned offences of this nature, the particulars whereof are before set forth.

Whoever shall  
purchase, pur-  
sue, or use any  
papal bulls, shall  
be guilty of præ-  
munire.  
Reg. 64.  
3 Inst. 127.  
27 Ed. 3. s. 1.  
c. 1.  
38 Ed. 3. s. 1.  
c. 4.  
Stat. 2. c. 1, 2,  
3, 4.  
Seld. in Flet.  
10. 4.  
3 Rich. 2. c. 3.  
7 Rich. 2. c. 12.  
12 Rich. 2. c.  
15.

*Sect. 12.* THE FIRST OFFENCE, viz. That of making use of *papal bulls*, is made a *præmunire* by many ancient as well as later statutes; for it is enacted by 25 Edw. 3. st. 6. called the statute of provisors, "that whoever shall, by a papal provision, disturb any patron to present to a benefice, &c. shall be fined and imprisoned till he make full renunciation, &c.": by 25 Edw. 3. st. 5. c. 22. "that if any one purchase a provision of an abbey or priory, he shall be out of the king's protection:" by 38 Edw. 3. and 12 Rich. 2. c. 15. and 13 Rich. 2. st. 2. c. 2. "that whoever shall accept a benefice contrary to 25 Edw. 3. shall be banished:" by 13 Rich. 2. st. 2. c. 3. "that whoever shall bring a sentence of excommunication against any person for executing the said statute of 25 Edw. 3. shall suffer pain of life and member:" by 16 Rich. 2. c. 5. "that whoever shall purchase or pursue, or cause to be purchased or pursued, in the court of *Rome* or elsewhere, any translations, processes, sentences of excommunication, *bulls*, instruments, or other things, contrary to the tenor of that statute, which touch the king, against him, "his

“ his crown, his regality, or his realm, or bring them within this realm, or receive them, &c. shall be out of the king’s protection, and their lands and tenements, goods and chattels, forfeited to the king; and they shall be attached by their bodies, &c.”: by 2 Hen. 4. c. 4. “ that whoever shall purchase from Rome a provision of exemption from ordinary obedience:” and by 2 Hen. 4. c. 4. “ that whoever shall put in execution *bulls* purchased by those of the order of *Cîteaux* to be discharged of tithes, shall incur the like penalty.” Also offenders of this nature are farther restrained by the 6 Hen. 4. c. 1.; the 7 Hen. 4. c. 8.; the 9 Hen. 4. c. 8.; and the 3 Hen. 5. c. 4.; by which the statutes abovementioned are enforced and explained. And by 23 Hen. 8. c. 21. s. 22. “ whoever shall sue for or execute any licence, dispensation, or faculty, from the see of Rome;” and by 28 Hen. 8. c. 16. (by which all bulls, briefs, &c. heretofore obtained from Rome, are made void) “ whoever shall use, allege, or plead the same in any court, unless they were confirmed by that statute, or afterwards by the king, shall incur the like penalty.” Yet it hath been holden, that the alleging of an *ancient bull* in order to induce another principal matter whereon to ground a title, without claiming any thing from *the bull* itself, is not within this statute. 2 Lev. 251.

*Sect. 13.* By 13 Eliz. c. 2. those who purchase any bull, &c. from Rome, are guilty of high treason. But those ancient statutes still continue in force; and it is in the election of THE CROWN to proceed either upon them, or 13 Eliz. c. 2. Also by the said statute of 13 Eliz. “ the aiders, comforters, and maintainers of such offenders after the offence, to the intent to uphold the said usurped power, incur a *præmunire*.” 1 Hale, 643. Vide sup. c. 3. Davis, 84.

*Sect. 14.* THE SECOND OFFENCE of this nature, viz. That of derogating from the king’s common-law courts, is said to have been a high offence at common law, and is made a *præmunire* by many ancient statutes; for by 27 Edw. 3. c. 1. and 38 Edw. 3. of provisors, “ If any subject draw any out of the realm in plea, whereof the cognizance pertains to the king’s courts, or of things whereof judgments be given in the king’s court, or sue in any other court, to defeat or impeach the judgments given in the king’s court, he shall be warned to appear, &c. in proper person, at a day containing the space of two months; at which if he appear not, he and his proctors, &c. shall be put out of the king’s protection, his lands and chattels forfeited, his body imprisoned and ransomed at the king’s will, &c.” Also in 21 Jac. 1. c. 3. s. 4. to procure any action to be delayed after notice, other than by regular process, is a *præmunire*. If a subject sue in any foreign court, to defeat any proceeding in the common-law courts, it is a *præmunire*. 2 R. Ab. 176. Rast. 466. B. 2. c. 48. s. 9. 3 Inst. 125. B. Præmu. 3.

*Sect. 15.* And by 16 Rich. 2. c. 5. “ Both those who shall pursue or cause to be pursued in the court of Rome or elsewhere any processes or instruments, or other things whatsoever which touch the king, against him, his crown, and regality, or his realm, and also those who shall bring, receive, notify, or execute them, and their abettors, &c. shall be put out of the king’s protection, &c.”

*Sect. 16.*



2 Bulst. 229.  
3 Inst. 125.  
C. Jac. 336.

**Sect. 16.** In the construction of these statutes it was holden, that certain commissioners of sewers for summoning one before them who had got a judgment at law, and imprisoning him till he would release it, were guilty of a *præmunire*.

3 Inst. 123.  
4 H. 4. c. 23.  
2 Cba. Cas. 97.  
D. 201. 301.  
1 Lev. 241.  
Hard. 125.  
1 D. Abr. 764.  
1 Sid. 463.  
1 Mod. 59.  
3 Keb. 221.

**Sect. 17.** Also there have been formerly many strong opinions, that suits in equity to relieve against a judgment at law are within these statutes; especially if the end thereof be to controvert the very point determined at law, or to seek relief after judgment in a case wherein the law may relieve, as against excessiveness of damages, &c. But it seems to be generally agreed at this day, that no such suit is within the intention of the said statute.

2 Buls. 299.  
1 Roll. 120.  
(a) 3 Inst. 120,  
121, 122.  
B. Præmun. 5.  
12. 16. 31.  
15 H. 7. 9.  
12 Co. 37.  
2 R. Abr. 177.  
Moor. 838.  
C. Jac. 134.

**Sect. 18.** It hath been said, that suits in the admiralty or ecclesiastical courts within the realm are within 16 Rich. 2. c. 5. by force of those words, "*or elsewhere*," if they concern matters the cognizance whereof belongs to the common law; as where a bishop deprives an incumbent of a donative, or excommunicates a man for hunting in his parks, &c. or where (a) commissioners of sewers imprison a man for not releasing a judgment at law.

**Sect. 19.** But it seemeth, that a suit in those courts for a matter which appears not by the libel itself, but only by the defendant's plea, or other matter subsequent, to be of temporal cognizance, as where a plaintiff libels for tithes, and the defendant pleads that they were severed from the nine parts, by which they became a lay-fec, is not within the statute, because it appears not that either the plaintiff or the judge knew that they were severed.

To appeal to  
the court of  
Rome is a *præ-*  
*munire*.

**Sect. 20.** THE THIRD OFFENCE of this nature, *viz.* That of appealing to *Rome* from any of the *king's courts*, is made a *præmunire* by 24 Hen. 8. c. 12. and c. 20, 21. and 25 Hen. 8. c. 19. by which it was enacted, "that all such appeals as formerly were made to *Rome*, shall from henceforth be made to the high court of chancery."

To exercise the  
office of a *suffra-*  
*gan* is a *præmu-*  
*nire*.

**Sect. 21.** THE FOURTH OFFENCE of this nature, *viz.* That of exercising the jurisdiction of a *suffragan* without the appointment of the bishop of the diocese, is made a *præmunire* by 26 Hen. 8. c. 14. which sets forth at large for what towns such *suffragans* may be nominated by the king, and also how they may be nominated, consecrated, and commissioned.

To refuse con-  
secration to a  
bishop after  
election, is a  
*præmunire*.

**Sect. 22.** THE FIFTH OFFENCE of this nature, *viz.* That of refusing to elect or consecrate the person nominated by the king to a bishopric, is made a *præmunire* by 25 Hen. 8. c. 20. s. 7. by which it is enacted, "that if any dean and chapter refuse to elect the person named in the king's letter for a bishopric, and to signify such election to the king within twenty days after the licence shall come to their hands, or if any archbishop or bishop after such election (or nomination by the king in default thereof) signified unto them by the king, shall refuse within twenty days to confirm and consecrate the person so signified to them, they incur a *præmunire*."

To maintain  
the power of  
THE POPE.  
5 Eliz. c. 1.

**Sect. 23.** THE SIXTH OFFENCE of this nature, *viz.* That of maintaining the pope's power, is made a *præmunire* upon the first conviction, and high treason upon the second.

**Sect. 24.**

**Sect. 24.** THE SEVENTH OFFENCE of this nature, viz. That of bringing in *Agnus Dei*, is made a *præmunire* by 13 Eliz. c. 2. s. 7, 8. by which it is enacted, "that if any one shall bring into the realm, &c. any *Agnus Dei*, crosses, pictures, beads, or such like superstitious things, pretended to be hallowed by the bishop of Rome, &c. and shall deliver or offer the same to any subject to be worn or used in any wise; or if any one shall receive the same to such intent, and not clear himself by discovering the offender, &c. he shall incur a *præmunire*." To import any *Agnus Dei* or other superstitious ornaments, is *præmunire*. Cawley, 52, 53.

**Sect. 25.** And so shall a justice of peace in the same county, who having any offence in that act declared unto him, shall not declare it to a privy counsellor within sixteen days. Cawley, 54.

**Sect. 26.** THE EIGHTH OFFENCE of this nature, viz. That of contributing to the maintenance of a *Popish seminary*, is made a *præmunire* by 27 Eliz. c. 2. s. 6. Keeping a popish school.

**Sect. 27.** THE NINTH OFFENCE of this nature, viz. That of refusing the oaths, is made a *præmunire* by several statutes; for by 1 Eliz. c. 1. s. 19. it is enacted, "that all ecclesiastical persons, and all ecclesiastical and temporal officers, and all persons having the king's fees or wages; and all persons taking orders, or any degree in any university within the realm, shall take the oath of *supremacy*, under pain of losing their benefices and offices." Refusing to take the oaths is a *præmunire*. N. B. The 1 Eliz. c. 1. as far as concerns the oath, is repealed by 1 W. & M. c. 8. s. 2.

By 5 Eliz. c. 1. s. 5. "All the persons above-mentioned who are required by the said statute of 1 Eliz. c. 1. to take the said oath, and all school-masters, public and private, barristers, benchers, readers, ancients in any house of court, &c. attornies, sheriffs, and officers belonging to the common or any other law, or to the crown, or to any court whatsoever, shall take the said oath in open court, before they shall be admitted to any such vocation or office, &c. or before commissioners appointed under the great seal, &c."

By 5 Eliz. c. 1. s. 6. "Any bishop may tender the said oath to any spiritual person within his diocese, as well in places exempt as others;" and by s. 7. "that commissioners may be appointed by the lord chancellor to tender the same to such persons as by their commission they shall be authorised to tender it unto."

By 5 Eliz. c. 1. s. 8. "If any person, compellable by either of the said acts, or appointed by such commissioners to take the said oath, shall refuse to take it on a tender thereof, he shall incur a *præmunire*."

And by 5 Eliz. c. 3. s. 2. "Such refusal shall be certified within forty days before the king in his court of king's bench, by those who have authority to tender the said oath, under the penalty of one hundred pounds; and that the sheriff of the county wherein the said court shall sit, may impanel a jury, who shall enquire of such refusal, in such manner as if it had happened in the same county."

In the construction of these statutes it hath been resolved,

*Sect.*

Raym. 212.  
1 Ven. 171.  
2 Keb. 325.

*Sect. 28. First,* That the obligation to take the said oath continued after the death of *Queen Elizabeth*, though the statutes say nothing of her *successors*; and the like resolution also has been made in relation to the oaths appointed by subsequent statutes.

Raym. 445.

*Sect. 29. Secondly,* That in a commission authorising persons to tender the said oath, a general description of the persons to whom it shall be tendered is sufficient, without naming them particularly by their names.

Dyer, 234.

*Sect. 30. Thirdly,* That if any person who tendered the oath as bishop, was not a bishop at that time, the defendant may give it in evidence upon the general issue.

1 Bulst. 197,  
198.  
2 Bulst. 290.  
1 Ven. 172,  
173.

*Sect. 31. Fourthly,* That the said oath must in substance be taken in the very words expressed in the acts, and cannot be qualified with any reserve whatever: yet it hath been resolved, that to use the words "*in conscience*" instead of "*in my conscience*," or "*sea of Rome*" instead of "*see of Rome*," makes no material variance.

Raym. 445.

*Sect. 32. Fifthly,* That a certificate of a refusal of the said oath made to the judges of the said court of the King's Bench by name, and not to the king in his said court, is sufficient within the meaning of the statute.

Dyer, 234, 363.

*Sect. 33. Sixthly,* That an ecclesiastical person is well described in such a certificate by the addition of *legum doctor, et sacris ordinibus constitutus*, without adding *clericus, &c.*

Dyer, 234.

*Sect. 34. Seventhly,* That such a certificate being entered of record, as brought into court such a day and year *per A. B. Cancellar.* of such a bishop, is good, without entering that it was so brought *per mandatum episcopi.*

Dyer, 234.

*Sect. 38. Eighthly,* That the trial must be by a jury of the county wherein the oaths were refused; for the statute only authorises an indictment by a jury of the county wherein the court sits.

See the books above cited.

*Sect. 36. Ninthly,* That any mis-recital of the very words of the oath, in an indictment for not taking it, is erroneous.

The 3 Jac. 1. c. 4. as far as concerns the oaths, is repealed by 1 W. & M. c. 8. s. 2.

*Sect. 37.* By 3 Jac. 1. c. 4. s. 13, 14. Any bishop, or two "justices of peace, whereof one is to be of the *quorum*, might tender the oath of obedience therein prescribed, to any person above the age of eighteen years, being under the degree of nobility, and convicted or indicted of recusancy, or not having received the sacrament twice in the year past, and also to any suspected stranger who shall not purge himself upon oath; and shall certify the names of such as take the said oath to the next quarter sessions, and commit those who refuse it till the next assizes or sessions, where the same shall be again tendered; and if the said persons, or any other persons whatsoever of the age of eighteen years, other than noblemen or noblewomen, shall there refuse to take it, they incur a *præmunire*, unless they be *femes covert*, who shall be committed till they take it."

Skinner, 11.

*Sect.*

*Sect. 38.* By 3 Jac. 1. c. 4. s. 41. "The lords of the council  
 " in like manner may tender the said oath to any nobleman or  
 " woman of the age of eighteen years, who refusing the same  
 " incur a *præmunire*, *femes covert* excepted." Sec 31 Geo. 3.  
c. 32.

*Sect. 39.* By 7 Jac. 1. c. 6. s. 26, 27. "All persons whatso-  
 " ever, as well ecclesiastical as temporal, of what estate, dignity,  
 " pre-eminence, sex, quality or degree soever he or she shall be,  
 " above the age of eighteen years, being in that act mentioned  
 " and intended, shall take the said oath; and any privy counsel-  
 " lor, or bishop within his diocese, may require any baron or bar-  
 " onness, of the age of eighteen years; and any two justices of  
 " the peace, whereof one to be of the *quorum*, may require any  
 " other person of that age to take it.—And if any person of or  
 " above the said age and degree shall be presented, &c. for not  
 " coming to church, &c. then three of the privy council, whereof  
 " the lord chancellor, &c. to be one, shall require such person to  
 " take the said oath.—And if any person whatsoever, of the said  
 " age and under the said degree, shall be presented, &c. for not  
 " coming to church, &c. or if the minister, &c. shall complain to  
 " any justice of peace, &c. and the justice shall find cause of sus-  
 " picion, then any one justice of peace shall require such person  
 " to take the said oath, &c. And all such persons refusing a  
 " tender of the said oath, shall be bound over to *the assizes* or *the*  
 " *sessions*, where, if they refuse again, they incur a *præmunire*:" See Cawley,  
246, &c.  
 And s. 27. "All such refusers are disabled to execute any public  
 " place of judicature, or bear any other office (being no office of  
 " inheritance or ministerial function), or to practise the common  
 " or civil law, physic or surgery, or the art of an apothecary."

*Sect. 40.* In the construction of these statutes it hath been re-  
 solved, that the justices of peace, &c. may send their warrant to  
 bring such persons before them, but that they cannot authorise  
 the constable to break open the doors to take them. 12 Co. 130,  
131.

*Sect. 41.* But by 1 William & Mary, c. 8. the oaths of *supre-  
 macy* and *obedience* prescribed by these acts were abrogated, and  
 the following *oath* and *declaration* substituted in their room:—  
 "I *A. B.* do sincerely promise and swear, that I will be faithful  
 " and bear true allegiance to his majesty KING GEORGE."—"I  
 " *A. B.* do swear, that I do from my heart abhor, detest, and  
 " abjure, as impious and heretical, that damnable doctrine and  
 " position, that princes excommunicated or deprived by the pope,  
 " or any authority of the see of Rome, may be deposed or mur-  
 " dered by their subjects, or any other whatsoever." "And I  
 " do declare, that no foreign prince, person, prelate, state, or  
 " potentate, hath or ought to have any jurisdiction, power, super-  
 " iority, pre-eminence or authority ecclesiastical or civil within  
 " this realm." Vide, 1 Geo. 1.  
c. 13.  
6 Geo. 3. c. 53.

*Sect. 42.* And by 1 Will. & Mary, c. 8. s. 3, 4, 5. "All per-  
 " sons who are required to take, or authorised to tender the said  
 " abrogated oaths, or either of them, are in like manner required  
 " and authorised to take and tender the said oath and declaration,  
 " under the same penalties, &c." Vide ch. 6.

*Sect.*

1 Comm. 368.  
4 Comm. 115,  
116, 123.

**Sect. 43.** By 7 Will. 3. c. 24. "Serjeants at law, counsellors, attornies, solicitors, proctors, clerks or notaries, practising as such in any court whatsoever, without taking the said oaths and subscribing the said declaration, incur a *præmunire*."

No descendant of Geo. 2, other than, &c. capable of contracting matrimony without consent, &c.

† **Sect. 44.** THE TENTH OFFENCE of this nature, viz. Illegally solemnizing marriage with any of the *royal family*, or assisting therein, is made a *præmunire* by 12 Geo. 3. c. 11. which enacts "that no descendant of the body of his late majesty king *George* the Second, male or female (other than the issue of princesses who have married, or may hereafter marry, into foreign families), shall be capable of contracting matrimony without the previous consent of his majesty, his heirs or successors, signified under the great seal, and declared in council (which consent, to preserve the memory thereof, is hereby directed to be set out in the licence and register of marriage, and to be entered in the books of the privy council); and that every marriage, or matrimonial contract, of any such descendant, without such consent first had and obtained, shall be null and void, to all intents and purposes whatsoever."

† **Sect. 45.** By 12 Geo. 3. c. 11. s. 2. "In case any such descendant of the body of his late majesty king *George* the Second, being above the age of twenty-five years, shall persist in his or her resolution to contract a marriage disapproved of, or dissented from, by the king, his heirs or successors; then such descendant, upon giving notice to the king's privy council, which notice is hereby directed to be entered in the books thereof, may at any time from the expiration of twelve calendar months after such notice given to the privy council as aforesaid, contract such marriage; and his or her marriage with the person before proposed, and rejected, may be duly solemnized, without the previous consent of his majesty, his heirs or successors; and such marriage shall be good, as if this act had never been made, unless both houses of parliament shall, before the expiration of the said twelve months, expressly declare their disapprobation of such intended marriage."

Persons who shall wilfully assist, &c. incur the penalties provided by 16 Rich. 2.

† By 12 Geo. 3. c. 11. s. 3. "Every person who shall knowingly or wilfully presume to solemnize, or to assist, or to be present at the celebration of any marriage with any such descendant, or at his or her making any matrimonial contract, without such consent as aforesaid first had and obtained, except in the case abovementioned, shall, being duly convicted thereof, incur and suffer the pains and penalties ordained and provided by the statute of provisions and *præmunire*."

And now I am in THE SECOND PLACE to consider those offences against the authority of king and parliament, which come under the notion of *præmunire*.

Maliciously to preach or affirm that the Pretender has any right to THE

**Sect. 41.** By 6 Ann. c. 7. "If any person shall maliciously and directly, by preaching, teaching, or advised speaking, declare, maintain, and affirm, that the pretended *Prince of Wales* hath any right or title to the crown of these realms, or that any other person or persons hath or have any right or title to the same,

“ same, otherwise than according to 1 Will. & Mary, c. 2. and 12 Will. 3. c. 2. and the acts then lately made in England and Scotland, mutually for the union of the two kingdoms; or that the kings or queens of this realm, with the authority of parliament, are not able to make laws to limit the crown and the descent, &c. thereof, shall incur a *præmunire*.”

crown, is a  
*præmunire*.

By 6 Ann. c. 23. “ It shall not be lawful for the peers of Scotland assembled and met together for the electing sixteen peers to fit and vote in the house of peers in the parliament of Great Britain, to act, propose, debate, or treat of any other matter or thing whatsoever, except only the election of the said sixteen peers; and every peer who shall at such meeting presume to propose, debate, or treat of any other matter or thing contrary to the direction of this act, shall incur the penalty of a *præmunire*.”

If any peer of Scotland met for the election of the sixteen peers propose any other matter, he is guilty of a *præmunire*.

Sect. 45. As to THE SECOND GENERAL POINT of this chapter, viz. In what manner offences of this nature are punished. It is to be observed, that most of the statutes of *præmunire* refer the punishment to 16 Rich. 2. c. 5. which enacts, that those who offend against the purport thereof “ shall be put out of the king’s protection, and their lands and tenements, goods and chattels forfeited to our lord the king; and that they be attached by their bodies, if they may be found, and brought before the king and his council, there to answer to the cases aforesaid; or that process be made against them by *præmunire facias*, in manner as is ordained in other statutes of provisors.”

4 Comm. 117.  
1 Bulst. 199.  
Co. Lit. 129.  
3 Inst. 125, 218.

Sect. 46. Inasmuch as this statute expressly saith, that such offenders shall be put out of the king’s protection, and also the statute of 25 Edw. 3. s. 5. c. 22. had farther added, “ that any one might do with a purchaser of the provisions therein prohibited as with the king’s enemy, and that he who should offend against such a one in body, lands, or goods, should be excused,” it was formerly holden, that a person attainted in a *præmunire* might lawfully be slain by any one, as being the king’s enemy, and out of the protection of the laws; but the latter opinions seem to have disapproved of this severity. However, it is expressly enacted by 5 Eliz. c. 1. s. 21, 22. “ that it shall not be lawful to kill any person attainted in *præmunire*, saving such pains of death or other hurt or punishment as heretofore might, without danger of law, be done upon any person that shall send or bring into the realm, or within the same shall execute, any process, &c. from the see of Rome.”

Co. Lit. 130.  
12 Co. 68.  
3 Inst. 128.  
B. Cor. 197.  
Jenk. 199.

Sect. 47. But howsoever the law may stand in relation to such persons as are within the exception of this act, it is certain that no person whatsoever attainted of any *præmunire* can bring an action for any injury whatsoever; and that no one knowing him to be guilty can with safety give him aid, comfort, or relief.

1 Inst. 130.  
1 Eliz. 1. c. 39.  
Staunf. 44.  
Plow. 97.  
4 Comm. 118,  
3 Jac. 333.

Sect. 48. But it hath been resolved, that those general words in the statute, 16 Rich. 2. c. 5. that “ all the lands and tenements shall be forfeited,” extend not to land entailed after the death of the offender.

1 Inst. 130.  
3 Inst. 126.  
2 Lev. 169.  
B.2. c. 49. s. 28.  
C. Car. 172,  
Jones, 217.

Sect.

1 Ven. 173.  
For the judgment in *præmunire*, see b. 2. c. 48. s. 9. to 273.

**Sect. 49.** Also it hath been resolved, that a statute, by appointing that an offender shall incur the penalty and danger mentioned in the 16 Rich. 2. c. 5. does not confine the prosecution for the offence to the particular process thereby given.

The following offences also have been made subject to the penalties of a *præmunire*.

1. To molest the possessors of abbey lands granted by parliament to Henry the Eighth and Edward the Sixth, 1 & 2 Ph. & Mary, c. 8. s. 40.

2. To obstruct the process of making gunpowder, or to prevent the importation of the ingredients of which it is made, by virtue of a pretended authority from the crown. 16 Car. 1. c. 21. 1 Jac. 2. c. 8.

3. To send any subject of this realm a prisoner beyond the seas in defiance of the *habeas corpus* act, 31 Car. 2. st. 2. See book 2. chap. sect.

4. To conspire to avoid the seizure or forfeiture upon the importation of cattle, as mentioned in the act, 20 Car. 2. c. 7.

5. To project any scheme by public subscription to the prejudice of great numbers in their trade, and similar to the South-Sea project. 6 Geo. 1. ch. 18. See Str. 472. L. Ray, 1361. post. ch.

## CHAP. V.

### OF MISPRISION OF TREASON. (1)

2 R. 3. 10.  
S. P. C. 37.  
B. Cor. 174.  
Treas. 25. 31.  
Skin. 636.  
1 Hale, 374.  
708.  
3 Inst. 36.  
4 Comm. 119.

**THE** word "*misprision*" has not any certain signification, but is generally applied to all such high offences as are under the degree of capital, and nearly bordering thereupon. It is said, that *a misprision* is contained in every treason or felony whatsoever, and that one who is guilty of felony or treason may be proceeded against for a *misprision* only, if the king please.

Hudson of the court of star-chamber, MSS. in Mus. Brit.

**MISPRISIONS** are generally said to be twofold.—First, *Negative misprisions*, which consist in the omission of something which ought to be done.—Secondly, *Positive misprisions*, which consist in some misdemeanor actually committed.

Hale, 43. 371.  
Sum. 127.  
Bract. 118.  
S. P. C. 37.  
3 Inst. 36.

**Sect. 2.** The negative *misprision* more immediately against the king is commonly called *misprision of treason*, which is an offence consisting in the bare knowledge and concealment of high treason (whether it be such by 25 Edw. 3. or subsequent statutes) without any degree of assent thereto; and this is declared to be a *misprision* only by 1 & 2 Mary, c. 10. But as common law, any delay in discovering *high treason*, whatever excuses the party might have for it, was deemed an assent to it, and consequently high treason.

Kely. 17. 21.  
4 Comm. 120.

**Sect. 3.** And at this day, if the concealment of high treason be accompanied with any circumstances which shew an approbation thereof, it amounts to high treason; as if one, having notice before-hand that persons designed to meet in order to conspire against

(1) By the law as it stood in the time of Edw. I. we learn from Bracton, it was a most imperious duty to discover immediately to the king, or his ministers, any treason which a man knew to be in contemplation against him. Having described of what treason or the *lese majestatis* consisted, viz. "ut si quis ausu temerario machinatus sit in mortem domini regis, vel aliquid egerit vel agi procuraverit ad seditionem domini regis vel exercitus sui, vel procurantibus auxilium et concilium præberit, licet id quod in voluntate habuerit non perduxerit ad effectum, &c."

"Si sit aliquis qui alium noverit inde esse culpabilem vel in aliquo criminosum, statim et sine intervallo aliquo accedere debet ad ipsum regem si possit, vel mittere si venire non possit ad aliquem regi familiarem et omnia ei manifestare per ordinem. Non enim debet morari in uno loco per duas noctes, vel per duos dies antequam personam regis videat, nec debet ad aliqua negotia quamvis urgentissima se convertere, quia vix permittitur ei quod retro aspiat." (Lib. 3. de Coronâ, p. 1186.)

against the government, go into their company and hear their treasonable consultation and conceal it; or if one who has been once accidentally in such company and heard such discourse, meet the same company a second time, and hear such like discourse, and conceal it.

*Sect. 4.* Also whoever receives and comforts a traitor, knowing him to be such, whether by counterfeiting of coin, (a) or otherwise, is himself a principal traitor; for such a receipt of a felon makes the receiver an accessory to the felony, and whatever makes an accessory in felony, makes a principal in treason.

3 H. 7. 10.  
3 Inst. 138.  
12 Co. 81, 82.  
Con. Dy. 296.  
Inf. B. 2. c. 29.  
(a) Qu.  
1 Hale, 233.  
137. 619. Kely. 22. S. P. C. 37.

*Sect. 5.* Neither can a person who has knowledge of a treason, secure himself by discovering that there will be a rising in general, without discovering the very persons intending to rise; nor even by discovering of these to a private person who is no magistrate.

*Sect. 6.* But it seems that one who is only told in general that there will be a rising, without knowing any of the persons or particulars of the design, is not bound to make any discovery at all.

*Sect. 7.* There is one *positive misprision* which is made *misprision of treason* by 13 Eliz. c. 2. by which it is enacted, "that those who forge *foreign coin* not current here, their aiders, abettors, and procurers, are guilty of misprision of treason, &c."

1 Hale, 376.  
4 Com. 121.

## CHAP. VI.

### OF CONTEMPTS AGAINST THE KING, HIS COURTS, GOVERNMENT, &c.

#### 1. Of Contempts against the King's Courts.

OTHER positive misprisions more immediately against the KING seem reducible to contempts against his palace or courts of justice: against his prerogative: against his person or government: and against his title.

CONTEMPTS against the king's palace, &c. have always been looked upon as very high misprisions. By the ancient law, before the conquest, fighting in the king's palace was a capital offence; and now by 33 Hen. 8. c. 12. s. 7. "Malicious striking in the king's palace, whereby any blood shall be shed, is punishable with the loss of hand, perpetual imprisonment, and fine at the king's pleasure."

3 Hen. 7. c. 14.  
9 Ann. c. 16.  
Steirn. de jure  
Goth. 1. 3. c. 3.  
L. L. Alured  
cap. 7. & 34.  
3 Inst. 140.  
Pop. 206.

*Sect. 2.* It seems questionable, from the construction of the whole act, and the general tenor of the law-books, whether striking in a palace wherein the king is not at the time actually resident (a),

See first part of  
the act.  
S. P. C. 38.  
B. Pain, 16.  
Dalt. c. 90.  
6 Mod. 75, 76.

3 Inst. 140. 4 Com. 125. (a) See the case of the Earl of Devonshire and Col. Culpepper, 11 State Trials, 133.



be within the statute; and it is said that the instance which is given in the *Third Institute*, of a person's hand being cut off for striking in THE TOWER, is not warranted by the record.

I. L. Ina. c. 6.  
I. L. Canuti,  
c. 56.  
L. L. Alured,  
c. 7.  
2 Inst. 549.  
3 Inst. 140.  
S. P. C. 38.  
Dalt. c. 90.  
41 Ass. 25.  
22 E. 3. 18.  
Dyer, 188.  
See b. 2. c. 48.  
s. 11.  
Dalis, 23.  
2 R. Abr. 76.  
1 Keb. 751.  
12 Co. 71.  
(b) Owen, 120.  
C. Eliz. 405.

1 Lev. 106.  
6 Mod. 172.  
Noy, 104.  
C. Jac. 367.

22 E. 3. 13.  
3 Inst. 141.  
Con. Sum. 131.

*Sect. 3.* However it is certain, that, by the common law which continues to this day, striking in *Westminster-hall*, where the king is only present as represented by his judges, and by their administration distributing justice to his people, is more penal than any striking in another place in his actual presence; for the latter is not punished with the loss of hand unless some blood be drawn, nor even then with the loss of lauds or goods; but if a person draw his sword on any judge in the presence of the court of *king's bench*, *chancery*, *common pleas*, or *exchequer*, or before the justices of *assize*, or *oyer and terminer*, whether he strike or not; or strike a juror; or any other person, with or without a weapon, he shall lose his hand and his goods, and the profits of his lands during his life, and suffer perpetual imprisonment (b), if the indictment lay the offence as done *coram domino rege*. (1)

*Sect. 4.* Neither can one who is guilty of such offence excuse the same by shewing that the person so struck by him gave the first assault.

*Sect. 5.* Also he who rescues a prisoner from any of the courts abovementioned, without striking a blow, shall forfeit his goods and

(1) In a late case, the information set forth a special commission to several of the judges and others, for the trial of Arthur O'Connor and others, for high treason, at Maidstone, &c.; and that pending the sessions, after the acquittal of O'Connor, and before any order or direction had been made by the court for his discharge, the defendants in open court, &c. made a great riot, and riotously attempted to rescue him out of the custody of the sheriff of Kent, to whose custody he had been assigned by the said justices and commissioners; and the better to effect such rescue and escape, did at the said sessions, in open court, and in the presence of the said justices and commissioners, riotously, &c. make an assault on one J. R., and did then and there beat, bruise, wound, and ill-treat J. R., and thereby impede and obstruct the said justices, &c. This was the substance of the three first counts. The fourth count, after stating the holding of the said session before the justices and commissioners, barely charged that the defendants unlawfully and maliciously intending to break the peace, and hinder the due and peaceable holding of the said sessions, did with divers others in open court, at and during the continuance of the said session, and in the presence of the said justices and commissioners, on, &c. at, &c. riotously, &c. assemble together to break the peace, and hinder the due and peaceable holding of the said sessions; and being so assembled, did then and there with force and arms at the said sessions, in open court, and in the presence aforesaid, riotously, &c. make a great riot and disturbance, &c. and thereby for a long time interrupt and obstruct the said justices, &c. in the lawful and peaceful holding of the said session, to

the hinderance of public justice. The fifth count was still more general. Two of the defendants were found guilty generally; and when they were brought up to receive judgment, Lord Kenyon intimated considerable doubt whether the court was not bound to pass the judgment of amputation, &c. for the offence so laid in the three first counts; and the matter stood over for consideration. In the present instance, and by the gracious interposition of the crown, as appears by the entry on the roll, stating in substance, that before judgment was pronounced, the Attorney-General said, that he had received his Majesty's royal commands and warrant concerning the prisoners, and the aforesaid misdemeanors, &c. under the sign manual wherein, after reciting that such an information had been exhibited against the defendants, on which they had been found guilty, his Majesty thought fit to discharge them from such parts of the said information on which any doubt had arisen or might arise, whether the judgments thereon were discretionary in the court, and authorized the Attorney-General to enter a *noli prosequi* as to such parts, and to pray judgment only on such charges as left the punishment in the discretion of the court. Accordingly *noli prosequi* was entered on the three first counts; and on the fourth and fifth the court gave judgment, that Lord Thanet should pay a fine of 1000*l.*, and be imprisoned in the Tower for a year, and give security for seven years, himself in 10,000*l.* and two sureties in 5000*l.* each; and that Mr. Ferguson should pay a fine of 100*l.*, be imprisoned for a year, and find surety for seven years, himself in 500*l.* and two sureties in 250*l.* each.

and the profits of his lands, and suffer imprisonment during life, but not lose his hand, because he did not strike.

*Sect. 6.* And he who makes an affray in the palace-yard near the said courts, but out of their view, shall be imprisoned during the king's pleasure, and severely fined, but not lose his hand. C. Eliz. 405.  
C. Car. 373.  
W. Jon. 345.  
Owen, 120.

*Sect. 7.* And not only those who are guilty of such an actual violence, but also those who disturb such courts by threatening or reproachful words to any judge sitting in them, are guilty of a high misprison: and in the time of *Edward the First* (a), one *William de Bruce*, who upon hearing judgment given against him in THE EXCHEQUER, said to THE CHIEF BARON, "*Roger, Roger, thou hast had thy will of me, which of a long time thou hast sought, and I will remember it,*" was for these words imprisoned during the king's pleasure, and ordered to walk from THE KING'S BENCH to THE EXCHEQUER, bareheaded and ungirt, and to ask forgiveness, &c. And in the time of *Charles the First*, one *Harrison* (b), for rushing into the court of common pleas, and saying to JUSTICE HUTTON sitting there, "*I do accuse Mr. Justice Hutton of high treason,*" was fined five thousand pounds, and imprisoned during the king's pleasure, and ordered to go to all the courts of *Westminster-hall* with a paper on his head, shewing his offence, and to make his submission, &c. These cases are the more remarkable, because in the first the offender was of a very honourable family, and in the second a bachelor of divinity, and yet condemned to such corporal punishment, the lowest of which is in judgment of law higher than the greatest fine whatever. (a) M. Term 33 & 34 Edw. 1. Moor, 819. 3 Inst. 142.  
(b) C. Car. 505, 501. Hutt. 131. Pop. 135.

*Sect. 8.* Also all who reflect on the justice or honour of those high courts seem to be indictable and highly finable, as if one charge an exemplification under THE GREAT SEAL to be contrary to the original. Hob. 220.  
Moor, 563.  
Pop. 135.

*Sect. 9.* Also he who gives another *the lie* in *Westminster-hall* sitting the courts, shall be bound to his good behaviour. 1 Lev. 107.  
1 Keb. 558.

*Sect. 10.* And he who makes an affray in the presence of any of the king's inferior courts of justice, is highly finable, but not punishable with the loss of hand, &c. 3 Inst. 141.  
12 Co. 71.

*Sect. 11.* And he who speaks contemptuous and reproachful words to the judge of such a court in execution of his office is immediately finable by such judge (a), or, as some say, may be (b) indicted, &c. as if one give *the lie* to a judge of a court-leet in the face of the court (c), or, being (d) admonished by him to pull off his hat, say, "*I do not value what you can do,*" or tell him in the face of the court that he is (e) forsworn, or call him (f) fool, &c. or say, "*If I cannot have justice here, I will have it else-where.*" (g) (a) C. Eliz. 78.  
2 R. Abr. 78.  
(b) 1 Sid. 144.  
con. 2 R. Ab. 78.  
(c) Owen, 113.  
Moor, 470.  
C. Eliz. 581.  
(d) Raym, 68.  
1 Keb. 451, 465.  
(e) 2 R. Abr. 78.  
(f) C. Eliz. 78.  
Moor, 247. (g) 1 Sid. 144. 1 Keb. 508.

*Sect. 12.* It was formerly holden that a man might be indicted for a slander of the justice of the nation, by reflecting on a sentence given in any court ecclesiastical or temporal; whether directly, as where one said that such a sentence given by the high commission court was against law; or obliquely, as where one said 2 R. Abr. 78.  
1 Roll, 245.

said that such a sentence was just, but that the testimonies on which it was founded were false, or the affidavits equivocating.

Hob. 202.

Moor, 819.

1 Ven. 10.

*Sect. 13.* But it seems the better opinion of this day, that a man cannot be indicted for any scandalous or contemptuous words spoken of or to such officers, not being in the actual execution of their office; for such an offence seems rather to proceed from ill breeding than a contempt of the government; and though it may be a cause to bind a man to his good behaviour, yet it does not seem to be of such consequence as to be a sufficient ground for a public prosecution, as for an offence against the common peace, &c.

And agreeable hereto it hath been resolved, that a man shall not be indicted for saying, that “whenever a burgess of such a town puts on his gown, *Satan* enters into him;” (*h*)—or, that “the mayor and aldermen of such a town are as great villains as any that rob on the highway;” (*i*)—or, that “the justices of peace understand no more of the statutes of excise than this jug, nor one of twenty of the parliament-men who made them;” (*k*)—or, that “such a justice of peace is a fool, an ass, and a coxcomb, for making such a warrant, and understands no more law than a slickhill;” (*l*)—or, that “he is not fit to be a justice of peace, for that he will do right or wrong according as his affections lead him;” (*m*)—or, that “such an order is a numscul order, and that the justice deserves to be hanged who made it;” (*n*)—or, that “such a justice of peace is a forsworn wretch, and that he will fling his purse at him;” (*o*)—or, for saying to a mayor of a town, “You MR. MAYOR, I do not care a fart for you; you MR. MAYOR, are a rogue and a rascal;”—(*p*) or for saying, that “the justices of peace have nothing to do with the excise.” (*q*)

3 Inst. 142.

Latch. 220.

Barr. 112.

2 R. Abr. 76.

*Sect. 14.* And not only those who disturb the administration of justice by direct contempts offered to the king’s courts, but also all such as are guilty of any injurious treatment of those persons who are under the more immediate protection of those courts, are highly punishable by fine and imprisonment; as if a man assault or threaten his adversary for suing him, or a counsellor or attorney for being employed against him, or a juror for giving a verdict against him, or a gaoler for keeping a prisoner in safe custody.

Hob. 271.

Raym. 376.

2 R. Abr. 177.

S. P. C. 11. 36.

27 Ass. 63.

B. Cor. 113.

3 Inst. 22. 106.

3 Leon. 207.

*Sect. 15.* Also all who endeavour to stifle the truth, and prevent the due execution of justice, are highly punishable; as those who being examined before the privy council concerning their knowledge of a crime whereof a third person is accused, disclose what passed in such examination, in order to suppress a farther discovery; and also all those who dissuade, or but endeavour to dissuade a witness from giving evidence against a person indicted, &c. or who advise a prisoner to stand mute on his arraignment, &c. And it was anciently holden, that if one of the grand inquest discovered to any person indicted the evidence against them, he is an accessory to the offence, whether treason or felony; and at this day it is agreed, that he is guilty of a high misprision, punishable by fine and imprisonment.

## II. Of Contempts against the King's Prerogative.

Contempts against the king's prerogative are of so various a nature, that they cannot well be reduced to any certain heads. However, the principal of them seem to come under the following particulars: **FIRST**, Refusing to assist the king for the good of the public. **SECONDLY**, Preferring the interests of a foreign prince to that of our own. **THIRDLY**, Disobeying the king's lawful commands or prohibitions.

**Sect. 2.** **FIRST** therefore, it is a high offence for any subject to deny the king that assistance for the good of the public, either in his councils or wars, which by the law he is bound to give him; as for a peer not to (a) come to the parliament at the day of summons, or to (b) depart from thence without the king's licence; or for a (c) privy counsellor to refuse to give his advice on an affair of state; or for any (d) private subject to refuse to serve the king in person if he be able, or to find another if he be not able, in the defence of the realm, against rebels and foreign invaders; or, as some say, to refuse to serve the king for pay in his wars abroad.

(a) Moor, 778. Noy, 102.  
(b) S. P. C. 38. F. Cor. 161.  
(c) 2 R. Abr. 211.  
(d) R. Abr. 165. B. Tenure, 41. 73.  
1 Ed. 3. c. 5.  
18 Ed. 3. c. 7.  
25 Ed. 3. c. 8.  
4 H. 4. c. 13.  
11 H. 7. c. 1.  
S. 18.

C. Car. 11. 153. 257. Crom. Jur. 83, 84. 3 Inst. 144. Hob. 235. 12 Co. 91. Ante. c. 3.

**Sect. 3.** **SECONDLY**, It is so high an offence to prefer the interest of a *foreign prince* to that of our own, that it is criminal to do any thing which may but incline a man so to do; as to receive a pension from a foreign prince without the leave of our king.

Vide ante, ch. 3.

**Sect. 4.** **THIRDLY**, It is also a high crime to disobey the king's lawful commands or prohibitions; as by obstinately refusing obedience to his writs; or contemning a summons from his council to appear before them; or not answering such questions in relation to a matter wherein the interest of the state is concerned, as shall be proposed by the privy council; or refusing to give evidence to a grand jury concerning a crime (for which (e) the court may impose an immediate fine); or not returning from beyond sea upon the king's letters to that purpose, for which the offender's lands shall be seized till he return (and when he does return he shall be fined); or assembling at a *tournament* against the king's express prohibition; or going beyond sea against the king's will expressly signified, either by the writ *ne exeat regnum* (which may be directed as well to a *layman* as to a *clergyman*, and on the suggestion of a *private* as well as of a *public* matter), or under the great or privy seal or signet, or by proclamation.

(e) Salk. 273.  
Dyer, 176. 128.  
Moor, 109. 779.  
Lane, 43.  
3 Inst. 179.  
Sav. 7. 8.  
2 R. Abr. 203.  
F. N. B. 85.  
1 Cha. Ca. 116.  
4 Comm. 122.  
1 Comm. 266.

**Sect. 5.** Also every contempt of a statute is indictable, if no other punishment be limited. (2)

C. Eliz. 655.  
B. 2. c. 26. s. 2.

## III. Of Contempts against the King's Person or Government.

All contempts against the king's person or government are very highly criminal, and punishable with fine and imprisonment, and sometimes

4 Comm. 123.

(2) To the foregoing contempts against the king's prerogative may be added neglecting to join the *posse comitatus*, or power of the county, being thereunto required by the sheriff or justices according

to the statute, 2 Hen. 5. c. 8. which is a duty incumbent upon all that are fifteen years of age, under the degree of nobility, and able to travel. 4 Comm. 124. Lamb. Eir. 315.

sometimes with the pillory, (3) by the discretion of the judges, upon consideration of all the circumstances of the case.

But inasmuch as it is generally obvious to common sense, in what cases and to what degree a man is guilty of this offence, and it would be endless to enumerate all the particulars, I shall content myself with glancing at some of the most general heads; as,

C. Car. 168.  
2 Keb. 336.

*Sect. 1. FIRST,* The charging the government with oppression or weak administration; as by saying, "that merchants are "screwed up here in *England* more than in *Turkey*;" or, that "it is a good world when beggarly priests are made lords, &c."

3 Mod. 52.  
5 Mod. 363.

*Sect. 2. SECONDLY,* The doing an act which impliedly encourages rebellion; as by absolving persons at the gallows, who, being condemned for high treason, shew no signs of repentance, but persist in justifying the fact; or by drinking to the pious memory of a person executed for high treason.

C. Jac. 37.  
Moor, 756.  
Noy, 101.

*Sect. 3. THIRDLY,* Endeavouring to frighten the king into a change of his measures with threats of the uneasiness of his subjects; as by subscribing a petition to him, in which it is intimated, that if it be denied, many thousands will be discontented, &c.

C. Jac. 38.  
Vide the case  
of Alexander  
Scott, for pub-  
lishing false news, O. B. June Sessions 1778. No. 504.

*Sect. 4. FOURTHLY,* Spreading false rumours concerning the king's intentions; as that he designs to grant a toleration to Papists, &c.

Noy, 105.

*Sect. 5. FIFTHLY,* Charging him with a breach of his coronation oath.

C. Car. 117,  
&c.

*Sect. 6. SIXTHLY,* Speaking contemptuously of him; as by cursing him, &c. or giving out that he wants wisdom, valour, or steadiness; or, in general, doing any thing which may lessen him in the esteem of his subjects; weaken his government; or raise jealousies between him and his people.

1 Sid. 143. For  
other contempts  
against the  
king's person  
and govern-  
ment, vide Skin, 633. 1 Black. 37.

*Sect. 7.* Also it is said to be an offence, for which a man may be indicted, to refuse in a foreign port to pay the usual customs, because it may cause a breach between our king and the king of the country.

#### IV. Of Contempts against the King's Title.

Contempts against the king's title are of two kinds:—*FIRST,* Denying his title.—*SECONDLY,* Refusing to take the oaths required by law for the support of his government.

Yelv. 107. 197.  
2 Roll. 90.  
Palm. 424.  
4 Comm. 123,  
124.

*Sect. 1.* The first offence of this kind, *viz.* that of denying the king's title, hath by some been carried so high as to be adjudged an *overt act* of compassing his death. However, it is certainly most highly criminal, and punishable with fine and imprisonment, and also such infamous corporal punishment, as to the discretion of the court shall seem proper, according to the heinousness of the crime and the circumstances of the parties. As if a man in writing

(3) By 56 Geo. 3. c. 138, the punishment of the pillory is abolished, except for perjury, subornation of perjury, and false swearing.

writing or discourse shall maintain that the king is an usurper; or that another hath a better title to THE CROWN, &c. For such like insinuations manifestly tend to raise tumults and disorders in the state, and to alienate the affections of the people from the prince, and incline them to favour the pretensions of another; and it is highly presumptuous for private persons to intermeddle with matters of so high a nature; and it will be impossible to preserve the peace of a government, unless subjects will quietly submit themselves to those whom Providence has placed over them, and prefer the public good to their own private inclinations and opinions. For otherwise, whenever the title to the crown shall happen to be contested, it will be impossible to end the difference without perpetual civil broils and dissensions, and the prince who prevails will be tempted to esteem those of the contrary party rather as enemies than subjects, if he find them ready and desirous to lay hold of all opportunities to disturb his government, and shake off their forced obedience. And since there is no tribunal but that of Heaven to which princes can appeal for the decision of their titles, when that seems so far to have declared in favour of one as to give him quiet possession of the throne, the public peace, which is the end of all government, requires a dutiful submission to him; and it is the highest madness to give up that ease and security which we may enjoy from a peaceful obedience, in exchange for that disorder, uncertainty, and bloodshed, which cannot but be expected from an attempt to wrest the sceptre out of the hands of our prince; and it is the highest ingratitude to make no other return but disloyalty and rebellion, for all the happiness we can enjoy under a just administration; and it is the greatest of absurdities to think that the good of the community, for the sake of which all government was instituted, ought not to be preferred before the disputed title of a particular person or family. All we can desire from government is the secure enjoyment of what we may call our own, and whether this or that competitor to the crown be the instrument of this happiness to us, seems little to concern us. Let the title of one out of possession of THE THRONE be never so plausible, it must have its original foundation from some positive law; which, when it cannot take effect without involving a nation in discord and confusion, the avoiding whereof is the very end of all laws, it must give way to the public necessity of the state; for there can be no human institution whatsoever but must be limited by this implicit reserve from the first principles of reason, that wherever the execution of it shall be absolutely inconsistent with the happiness of the people for whose sake it was ordained, it ought so far to be suspended.

*Sect. 2.* For this and many other such like reasons the law has always had a most tender regard for the security of the prince in possession of THE CROWN; and as it has made it high treason to compass his death, &c. (a), so it hath also made it highly penal in an inferior degree to disturb or disquiet his government. 4 Comm. 123.

As to THE SECOND kind of offences of this nature, *viz.* That of refusing to take the *oaths* required by law for the support of the king's government, I shall consider—FIRST, The offence of re-

fusing the oaths required for this purpose by the *common law*.—  
SECONDLY, The offence of refusing the oaths required *by statute*.

Finch, 241,  
242.  
2 Inst. 73.  
1 Hale, 64. 71.  
2 Keb. 314.

1 Comm. 367.  
4 Comm. 270.  
423.

*Sect. 3.* As to THE FIRST PARTICULAR, it seems to be a high contempt at the common law to refuse to take the *oath of allegiance* to the king, which all laymen above the age of twelve years are bound to take at the tourn or court-leet, &c. And surely nothing can be more unreasonable than to deny the king, whose government we are happy under, all proper assurances of our fidelity to him; for how can we expect to enjoy the privileges of subjects from one to whom we refuse to acknowledge ourselves subjects, or hope for protection from one whom we provoke to esteem us as his enemies, or blame that government for treating us as mal-contents to which we give so just a cause to suspect our fidelity? If we consult THE LAW OF GOD, that will tell us, that “the powers that be are ordained of God.” If we will hear THE VOICE OF REASON, that will convince us, that not only the peace and safety of the community, but also our own preservation, requires us to pay a dutiful obedience to those who govern us; and can we think it unlawful to engage ourselves to do what it is our duty to do? If we will consult THE PRACTICE OF ALL NATIONS, that will shew us, that even conquest, which is the weakest of all titles, has always been esteemed to give the conqueror such a right to the obedience of the conquered, that upon his taking them into his protection, they have in all ages been ready to promise a reciprocal obedience. And if we will consult OUR OWN LAWS, we shall find them to direct us to pay our allegiance to the king who governs us, as has been fully proved in the chapter of high treason.

As to THE SECOND PARTICULAR, *viz.* That of refusing the oaths required *by statute* for the support of the government, I shall consider,—FIRST, The offence of refusing the oaths of *allegiance* and *supremacy*.—SECONDLY, The offence of refusing the oath of *abjuration*.

1 Comm. 368.  
2 Inst. 121.  
1 Hale, 64.  
4 Comm. 115.

*Sect. 4.* As to THE FIRST of these offences, *viz.* That of refusing the oaths of *allegiance* and *supremacy*, which since THE REFORMATION OF RELIGION have been thought necessary to be required from all persons, especially from those who are intrusted with an office, in order to secure our princes from the intrigues of popes, who have often taken upon them to dispense with oaths of allegiance made to such princes whom they are pleased to call heretics, and to persuade the people that they may lawfully depose those who have so far incurred the displeasure of the bishop of Rome as to be excommunicated by him, it having been shewn already under what penalties officers are bound to take the said oaths, and how far all persons whatsoever are compellable to take them under pain of incurring a *præmunire* (*a*), I shall only take notice in this place of the method of proceeding on 1 Will. & Mar. c. 8. by which it is enacted, “That persons refusing the “said oaths, being *tendered* to them by persons lawfully authorized to tender the same, shall be committed by the persons “making such a tender for three months, unless they shall pay “such sum, not exceeding *forty shillings*, as the persons who  
“ shall

(a) Ante, ch. 1.  
&c.

“ shall make such tender shall require of them ; and if they refuse again at the end of the three months, that they shall be imprisoned six months, or pay a sum not above ten or under five pounds, and also find sureties for their good behaviour and appearance at the next assizes, where if they refuse the said oaths, they shall be incapable of any office, and continue bound to their good behaviour ; and if they refuse THE DECLARATION mentioned in 25 Car. 2. c. 2. they shall suffer as *Papish recusants* convict.”

*Sect. 5.* It seemed to be the intencion of this statute to give the government an election to proceed either on the mild method therein prescribed, or the more severe one appointed by the former laws, according to the circumstances of the case, and quality of the offender, &c.

† But now, by 31 Geo. 3. c. 32. s. 18. “ No person shall be summoned to take the oath of supremacy and allegiance, and make the declaration as required by 1 Will. & Mary, c. 8. the 1 Geo. 1. ses. 2. c. 13. and 25 Car. 2. c. 2. or be prosecuted for not obeying such summons.”

*Sect. 6.* As to THE SECOND OFFENCE of this kind, *viz.* That of refusing the *oath of abjuration*, the same depends on those laws which the nation has been of late under a necessity of establishing, by adding a new limitation to the law relating to the succession of THE CROWN, excluding all *Papists* from a possibility of inheriting it ; who, if they be true to their engagements to their own religion, cannot but be false to those they may make to ours, and can never be expected to execute those laws, which they cannot but think void, as being repugnant to the laws of God ; or to defend that faith which they think damnable ; or to observe those oaths which seem to them to have been ordained for the support of irreligion. And from these considerations they have been disabled from inheriting THE CROWN, it seeming of absolute necessity in our present circumstances, for the good of the community, to make such an alteration in law, which, like all other human laws depending merely on the policy of men, seems to have nothing in it so sacred as to oblige the people unalterably to abide by it to the hazard of their common safety, peace and happiness, for the sake whereof it was at first ordained. For surely there cannot be so much danger to the common good from such an alteration, as must needs follow from the government of a prince whose conscience is under the influence of those who are implacable enemies to the religion of his country, and who thinks himself bound by his duty to God and his church to promote that interest, which his people think themselves under the like obligations to oppose. From which unhappy circumstances nothing can be expected but endless factions, discords, irreconcilable jealousies and distrusts between prince and people, which, if they break not into an open rupture, will at least be attended with such convulsions and uneasinesses, as render a state of government scarce one degree more secure than a state of anarchy and confusion.

*Sect. 7.* For the remedying of such like inconveniences, it having

1 Comm. 368.

1 Comm. 368.



having been thought proper to exclude all *Papists* from the crown, it was likewise thought expedient, by the statute 13 Will. 3. c. 6. and 1 Geo. 1. st. 2. c. 13. to secure the present settlement, by obliging all persons in *public offices* and *employments* to take the oaths of allegiance and supremacy, to make the declaration, and also to take the *oath of abjuration*, or otherwise it enacts that “they shall be *ipso facto* adjudged incapable and disabled in law to have, occupy, or enjoy the said offices, &c. and “if they shall by themselves, or deputy or trustee, execute any “the said offices, &c. and shall be thereof convict, &c. they shall “be disabled to prosecute any suit at law or equity, or to be “guardians, executors, or administrators, or capable of any legacy “or deed of gift, or to be in any office within this realm, or to “vote at any election for members of parliament, and shall forfeit “FIVE HUNDRED POUNDS, &c.”

If the heads, &c. of any of the colleges in Oxford or Cambridge neglect to take the oath, the king may nominate,

*Sect. 8.* And by 1 Geo. 1. st. 2. c. 13. s. 12. “If any member of either university shall neglect to take and subscribe the “said oaths according to the intent of the said act, or to produce “a certificate thereof, under the hand of some proper officer of “the respective court, and cause the same to be entered in the “register of the proper college or hall within one month after his “having taken and subscribed the said oaths; and if the persons “in whom the right of election of such member shall be, do neglect to elect some fitting person in his stead within twelve “months, &c. that then the king may, under the great seal or “sign manual, nominate some fitting person, qualified according “to the local statutes of such college, &c. and if the head of any “college, &c. shall neglect to admit such nominee by the space “of ten days after such admission shall be demanded of him, that “then the local visitor shall admit the said nominee; and if such “visitor shall neglect or refuse to admit such person within the “space of one month after the same shall be demanded, that then “the court of king’s bench may issue a writ of *mandamus* to such “visitor to admit such nominee, &c.”

No member of parliament shall vote till he has taken the oaths.

*Sect. 9.* By 1 Geo. 1. st. 2. c. 13. s. 16. “That no peer shall “vote or make his proxy, or sit in the house of peers during “any debate, and that no member of the house of commons shall “vote or sit during any debate in the said house after the speaker “is chosen, until he shall have taken the said oaths, &c. under “pain of the disabilities and forfeitures abovementioned, &c.”

Form of the oath of abjuration.

*Sect. 10.* By 6 Geo. 3. c. 53. reciting the above statutes of 1 Geo. 1. c. 13. and 5 Geo. 1. c. 29. the oath of abjuration shall be administered in manner and form as follows: (that is to say) “I *A. B.* do truly and sincerely acknowledge, profess, testify, “and declare, in my conscience, before God and the world, that “our sovereign lord KING GEORGE is lawful and rightful king of “this realm, and all other his majesty’s dominions and countries “thereunto belonging. And I do solemnly and sincerely declare, “that I do believe, in my conscience, that not any of the descendants of the person who pretended to be *Prince of Wales* during “the life of the late king *James the Second*, and since his decease “pretended to be, and took upon himself the stile and title of “king

“ king of *England* by the name of *James the Third*, or of *Scotland*  
 “ by the name of *James the Eighth*, or the stile and title of king  
 “ of *Great Britain*, hath any right or title whatsoevêr to the  
 “ crown of this realm, or any other the dominions thereunto be-  
 “ longing: and I do renounce, refuse, and abjure any allegiance  
 “ or obedience to any of them. And I do swear, that I will bear  
 “ faith and true allegiance to his Majesty KING GEORGE, and  
 “ him will defend to the utmost of my power, against all traito-  
 “ rous conspiracies and attempts whatsoever which shall be made  
 “ against his person, crown, or dignity. And I will do my utmost  
 “ endeavour to disclose and make known to his majesty, and his  
 “ successors, all treasons and traitorous conspiracies which I shall  
 “ know to be against him, or any of them. And I do faithfully  
 “ promise, to the utmost of my power, to support, maintain, and  
 “ defend the succession of the crown against the descendants of  
 “ the said *James*, and against all other persons whatsoever, which  
 “ succession, by an act intitlèd ‘ An Act for the further Limita-  
 “ tion of the Crown, and better securing the Rights and Liber-  
 “ ties of the Subject,’ is and stands limited to *the Princess Sophia*,  
 “ electoress and duchess dowager of *Hanover*, and the heirs of  
 “ her body being protestants. All these things I do plainly and  
 “ sincerely acknowledge and swear, according to these express  
 “ words by me spoken, and according to the plain common sense  
 “ and understanding of the same words, without any equivoca-  
 “ tion, mental evasion, or secret reservation whatsoever. And I  
 “ do make this recognition, acknowledgment, abjuration, renun-  
 “ ciation, and promise, heartily, willingly, and truly, upon the  
 “ true faith of a Christian.”

## CHAP. VII.

### OF FELONY AND MISPRISION OF FELONY.

OFFENCES more immediately against the subject are either capital or not capital.—The capital offences are either by the common law, or by statute.

*Sect. 1.* Those by the common law come generally under the title of FELONY, which *ex vi termini* signifies *quodlibet* (1) *crimen felleo animo perpetratum*, and can be expressed by no periphrasis, or word equivalent, without the word *feloniciè*. Vide Spelm. Gloss. verb. Felonia, 214. Co. Lit. 391.

(2) *Sect. 2.* FELONY is said to be included in *high treason*, and consequently a pardon of felony discharges an indictment of high treason, if it want the word *proditoriè*. 3 H. 7. 10. 3 Inst. 15. 4 Comm. 94. 97.

*Sect.*

(1) This is the fanciful derivation of the term Felony by Sir E. Coke—but the derivation adopted by Blackstone from Sir Ed. Spelman seems more probable. Felon according to him is derived from two Northern words; *FEF*, which signifies the fief or feud, and *LOV*, which signifies price or value. Felony, therefore, is *preitum feudi*, the consideration for which a man gives up his fief.—Felony in this sense signified the forfeiture of the fief, and

by the change of meaning in language the penal consequences of the crime became the name of the crime itself.

(2) Sir Ed. Coke says it was *anciently* so considered, and that a pardon of felony will discharge an indictment for Treason if it want the word *proditoriè*, because it can be no good indictment for treason without that word.

*Sect. 3.* It is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or mis-animadversion; as where persons break open a door in order to execute a warrant, which will not justify such a proceeding (*a*); *affectio enim tua nomen imponit operi tuo; item crimen non contrahitur nisi nocendi voluntas intercedat.* (*b*) But the bare intention to commit a felony is so very criminal, that, at the common law, it was punishable as felony, where it missed its effect through some accident no way lessening the guilt of the offender. (*c*) But it seems agreed at this day, that felony shall not be imputed to a bare intention to commit it; yet it is certain that the party may be very severely fined for such an intention. (*d*)

(*a*) Foster.

(*b*) Bract. 1.  
c. 4.  
S. P. C. 17. 27.

(*c*) 1 Sid. 236,  
231.  
Kely. 24.

(*d*) Bacon's  
case, 1 Lev.  
146. Rex v. Cooper. 5 Mod. 206.

*Sect. 4.* But before I proceed to treat of each crime in particular, I shall endeavour to shew,

1. Where an offence shall be said to be made felony by statute.

2. What is incidentally implied in every such statute.

As to THE FIRST POINT, viz. Where an offence shall be said to be made felony by statute.

1 Hale, 627.  
641. 703.  
B. Cor. 204.  
3 Inst. 91.  
2 Inst. 434.  
Co. Lit. 391.  
Hobart, 293.

Co. Lit. 391.  
Hob. 270. 293.  
3 Inst. 146.

*Sect. 5.* It seems clear, that not only those crimes which are made felonies in express words, but also all those which are decreed to have or undergo judgment of life and member by any statute become felonies thereby, whether the word "felony" were omitted or mentioned.

*Sect. 6.* But an offence shall never be made felony by the construction of any doubtful and ambiguous words of a statute; and therefore, if it be only prohibited under "pain of forfeiting all that a man has," or of "forfeiting body and goods," or of being "at the king's will for body, land, and goods," it shall amount to no more than a high misdemeanor, punishable by imprisonment, &c.

1 Hale, 324.  
685. 570.  
2 Bulst. 349.  
Dyer, 323.  
1 Leon. 295.

*Sect. 7.* Also where a statute makes a second offence felony, or subject to a heavier punishment than the first, it is always implied, that such second offence ought to be committed after a conviction for the first; from whence it follows, that if it be not so laid in the indictment, it shall be punished but as the first offence; for the gentler method shall first be tried, which perhaps may prove effectual.

Rex v. Davis,  
Cases in Cro.  
Law, 228.

† *Sect. 8.* But if a statute make the doing of an act *felonious*, and a subsequent statute make it *penal* only, the latter statute is considered as a virtual repeal of the former, so far as relates to the punishment of the offence.

3 Inst. 73.

† *Sect. 9.* If a statute create a felony and say, that the offender shall *suffer death*, yet he shall, in such case, have the benefit of clergy; for this being a privilege allowed by the common law, cannot be taken away without express words.

As to THE SECOND POINT, viz. What is incidentally implied in every statute making an offence felony.

*Sect.*

*Sect. 10.* It seems clear, that every such statute does, by necessary consequence, subject the offender to the like attainder and forfeiture, &c. and also does require the like construction as to those who shall be accounted accessaries before or after, and to all other intents and purposes, as is incidental to a felony at common law.

3 Inst. 47.  
59. 90.  
Crompt. 42.  
Dalish. 11. 22.  
Salk. 542.

*Sect. 11.* Yet where such a statute saves the corruption (3) of blood, it impliedly saves the descent of the land of the offender to his heir: also where it saves the land to the heir, it prevents the corruption of blood so far: and it is said, that in both cases it saves the wife's dower, because wherever an heir takes as heir, he shall not avoid a title of dower, in respect of the same inheritance; but notwithstanding such a saving, the land shall be forfeited for the life of the offender.

3 Inst. 47.  
1 Hale, 703.

*Sect. 12.* It is said, that misprision of felony is as well incidental to a felony created by statute as to one at common law.

1 Hale, 652.  
2 Hale, 708.

*Sect. 13.* If one commit an offence which is made felony by statute, and then the statute be repealed, he cannot be punished as a felon in respect of that statute.

Bro. Abr.  
Cor. 203.

### *Misprision of Felony.*

Offences more immediately against the subject, not capital, are either *misprision of felony*, or other *inferior offences*.

3 Inst. 36.  
1 Hale, 374,  
375. 652. 703.

*Sect. 1.* It is said, that every *felony* includes *misprision of felony*, and may be proceeded against as a *misprision* only, if the king please, as hath been shewn already in chap. 5.

1 B. Treas. 25.  
2 Rich. 3. 10.  
S. P. C. 32.

*Sect. 2.* But generally *misprision of felony* is taken for a concealment of felony, or a procuring of the concealment thereof, whether it be felony by the common law, or by statute.

Summary, 129.  
S. P. C. 37. c.  
3 Inst. 139.

*Sect. 3.* For this offence every common person is punishable by fine and imprisonment at common law. And by the *statute of Westminster*, 3 Edw. 1. c. 9. "If the sheriff, coroner, or any other bailiff within a franchise, or without, for reward, or for prayer, or for fear, or for any manner of affinity, conceal, consent, or procure to conceal the felonies done in their liberties; or otherwise will not attach nor arrest such felons (there as they may), or otherwise will not do their office, for favour borne to such misdoers, and be attainted thereof, they shall have one year's imprisonment, and after make a grievous fine at the king's pleasure, if they have wherewith; and if they have not whereof, they shall have imprisonment of three years."

B. Treas. 25.  
3 Inst. 173.

*Sect. 4.* By 3 Hen. 7. c. 1. "The justices of the peace of every shire of this realm, for the time being, may take by their discretion an inquest, whereof every man shall have lands and tenements to the yearly value of forty shillings, at the least, to enquire of the concealments of other inquests taken before them, and afore other, of such matters and offences as are to be enquired and presented afore justices of the peace, whereof complaint shall be made by bill, or by bills, as well within franchise as without. And if any such concealment be found

" of

(3) By 54 Geo. 3. c. 145, corruption of blood is abolished, except in the cases of high treason, petit treason, and murder, and abetting and procuring the same.

“ of any inquest, as is afore rehearsed, had or made within the  
 “ year after the same concealment, every person of the same in-  
 “ quest to be amerced for the concealment, by discretion of the  
 “ same justices of the peace; the said amerciements to be  
 “ sessed in plain sessions.”

1 Hale, 619.  
 S. P. C. 40.  
 3 Inst. 134.  
 Summary, 130.

*Sect. 5.* To this title of *misprision of felony*, that of *theftbote* seems not improperly reducible, which is where one not only knows of a felony, but takes his goods again, or other amends, not to prosecute.

F. Cor. 353.  
 2 Hale, 400.  
 2 And. 47.  
 Cro. Eliz. 486.  
 536. B. 2. c. 29.  
 s. 26, &c.

*Sect. 6.* This offence is very nearly allied to felony, and is said to have been anciently punished as such. But at this day it is punishable only with ransom and imprisonment, unless it were accompanied with some degree of maintenance given to the felon, which makes the party an accessory after the fact.

B. Cor. 122. 42.  
 Ass. Sum. 130.  
 1 R. Abr. 67.  
 F. Ass. 346.

*Sect. 7.* But the bare taking of one's own goods again which have been stolen, is no offence at all, unless some favour be shewn to the thief. (4)

(4) To take any reward for helping any person to stolen goods, is made felony by 4 G. 1. c. 11. And to advertise a reward for the return of things

stolen, incurs a forfeiture of fifty pounds, by 25 G. 2. c. 36. for which vide *post*, tit. *Larceny*.

## CHAP. VIII.

### OF CASUAL DEATH AND OF DEODANDS.

**CAPITAL OFFENCES** at common law more immediately against the subject, are of three principal kinds: **FIRST**, such as are committed against his *life*: **SECONDLY**, such as are against his *goods*: **THIRDLY**, such as are against his *habitation*.

Book 2d. c. 17.

*Sect. 1.* There is another mixed kind of capital offences, which consists in the hindrance of the due process of public justice, which I shall consider in the second book, wherein I shall treat of the means of bringing offenders to their due punishment.

Bract. 1. 3. c. 4.

*Sect. 2.* **OFFENCES** against the *life* of a man come under the general name of *homicide*, which in our law signifies the killing of a man by a man.

1 Hale, 471,  
 472.

*Sect. 3.* But before I treat hereof, it may not be improper to consider the killing of a man merely *per infortunium*, occasioned by some animal or thing without life, without the default or procurement of another man; as where one is killed by a fall from a horse or cart, &c. which though it be not properly *homicide*, nor punishable as a crime, yet is taken notice of by the law, as far as the nature of the thing will bear, in order to raise the greater abhorrence of *murder*; and the unhappy instrument or occasion of such death is called a **DEODAND**, and is forfeited to the king, in order to be disposed of in *pious uses* by the KING'S **ALMONER**; as also are all such weapons whereby one man kills another.

Pult. 125.  
 5 Co. 110.  
 3 Inst. 57, 58.  
 Crom. 31.  
 1 Hale, 34. 419.

S. P. C. 21.

*Sect. 4.* It seems clearly settled, that a horse, &c. killing an infant

infant within the age of discretion, are as much forfeited as if he were of age: but formerly it was holden, that a horse or cart, by a fall from which an infant was slain, were not forfeited; perhaps for this reason,(1) because the misfortune might rather seem owing to the indiscretion of the infant than to any default in the horse, &c. But this distinction has not been allowed of late; for the law does not ground the forfeiture on any default in the things forfeited, since it extends it to things without life, to which it is plain that no manner of fault can be imputed.

3 Inst. 58.  
Sum. 31.  
Pult. 125.  
Dalt. c. 97.  
2 Keb. 719.  
806.

*Sect. 5.* Also, by the opinion of our ancient authors, things fixed to a freehold, as the wheel of a mill, a bell hanging in a steeple, &c. may be deodands; but by the latter resolutions they cannot, unless they were severed before the accident happened.

S. P. C. 20.  
Pult. 124.  
1 Sid. 206, 207.  
1 Lev. 136.  
Raym. 97.  
6 Mod. 187.

*Sect. 6.* However, it is agreed by all, that a ship in salt water, whether in the open sea or within the body of a county, from which a man falls and is drowned, is not forfeited; because persons at sea are continually exposed to so many perils, that the law imputes such misfortunes happening there, rather to them than to the ship. Also it seems clear, that when a man riding on a horse over a river is drowned through the violence of the stream, the horse is not forfeited, because, not that but the waters caused his death;(2) but it is said, that a ship by a fall from which a man is drowned in the fresh water shall be forfeited, but not the merchandize therein, because they no way contribute to his death. And by the same reason it seems, that if a man riding on the shafts of a waggon fall to the ground and break his neck, the horses and waggon only are forfeited, and not the loading, because it no way contributed to his death; for which cause, where a thing not in motion causes a man's death, that part thereof only which is the immediate cause is forfeited. As where one climbing upon the wheel of a cart while it stands still, falls from it and dies of the fall, the wheel only is forfeited: but if he had been killed by a bruise from one of the wheels being in motion, the loading also would have been forfeited, because the weight thereof made the hurt the greater; and it is a general rule, that wherever the thing which is the occasion of a man's death is in motion at the time, not only that part thereof which immediately wounds him, but all things which move together with it, and help to make the wound more dangerous, are forfeited also; for the rule is, *omnia quæque movent ad mortem sunt deodanda*.

S. P. C. 20, 21.  
Pult. 124, 125.  
3 Inst. 58.  
1 Hale, 422.  
C. Jac. 483.  
2 Roll. 23.  
Popham, 136.  
Salk. 220.  
Str. 61.  
Co. Lit. 53.  
283.

Sayer, 249.  
F. Cor. 341.

Bract. l. 3. c. 5.

*Sect. 7.* In all these cases, if the party wounded die not of his wound within a year and a day after he receive it, there shall be nothing forfeited, for the law does not look on such a wound as the cause of a man's death, after which he lives so long; but if the

S. P. C. 21.  
Dalt. c. 97.  
Plowd. 260.  
Keilw. 68.

(1) The forfeiture of deodands originated in the blind days of popery and superstition. They were designed to purchase, by propitiatory masses, an expiation for the souls of such as were snatched away by untimely death. But the presumed innocence of childhood rendered such atonement unnecessary. Therefore no deodand is due, where an infant under the age of discretion is killed by a

fall from any thing that is not in motion, 1 Comm. 300. But if the instrument move to the death either of an infant or an adult, it is forfeited, on an inquisition found, as a deodand. 3 Inst. 57. 1 Hale, 422.

(2) Quere if it had appeared that the horse had thrown him.

the party die within that time, the forfeiture shall have relation to the wound given, and cannot be saved by any alienation or other act whatsoever in the mean time.

5 Co. 110.  
Co. Lit. 115.  
Dalt. c. 97.  
S. P. C. 21.  
Pult. 125.  
Sec 4 Edw. 1.  
de Offic. Coro-  
natoris.  
1 Hale, 418, 419.

*Sect. 8.* However, nothing can be forfeited as a deodand, nor seized as such, till it be found by the coroner's inquest to have caused a man's death; but after such inquisition, the sheriff is answerable for the value of it, and may levy the same on the town where it fell, and therefore the inquest ought to find the value of it. (3)

(3) Upon inquisitions of this kind the jury generally find the value of the deodand to be as small as possible, and even confine that value, according to the circumstances of the case, to the very thing or part of the thing itself which caused the death. 2 Bac. Abr. 26. This practice the court of King's Bench has impliedly sanctioned, by refusing to reform it on an application in favour of the crown or its grantee. Fos. 206. 2 Bar. K. B.

82. Nor can such an inquisition be taken by the grand jury on default of the coroner, 1 Burr. 19. (and when taken by the coroner, it may be moved and traversed, 1 Burr. 20. 2 Hale, 116.) because it is transacted in secret, taken *ex parte*, and intended as the platform of an odious superstitious claim, 4 Inst. 196. repugnant to the principles of sound reason and true policy. Foster, 266.

## CHAP. IX.

### OF FELO DE SE.

(1) **HOMICIDE** properly so called, is either against a man's own life or that of another.

In

(1) Homicide, in its most general division, is into felonious or not felonious. Felonious is either *felon de se*, or felonious homicide of a man's self; murder, which is the killing of another with malice aforethought, either express or implied; and manslaughter, which is the killing of another without premeditation or malice aforethought. Homicide not felonious is either justifiable or excusable. It is justifiable in advancement of justice, as by the execution of malefactors, or when it happens in the due and proper execution of legal process in which resistance is made. It is also justifiable when it happens in certain cases of defence of a man's property, habitation, or person; but this, it is to be observed, does not extend to every case where a man's personal safety or property or habitation is invaded, but only to cases when a known felony is attempted to be committed by violence, and when it is necessary for immediate protection to repel force by force—as an attempt to commit a burglary in a man's house, to rob him or to murder; in these cases it is justifiable to kill the aggressor. There are other cases of homicide where the killing cannot be wholly justified, yet may be committed under such circumstances of palliation that the fact may stand excused: as when it happens by misadventure, or accident; or in other cases of self-defence, when the circumstances under which a man is killed will not amount to a justification of the party killing the other, and yet it is so far excusable that it is not the felonious killing of manslaughter. With respect to felonious homicide, the ancient judgment was that of death, as in other cases of felony, but with benefit of

clergy, until the stat. of 23 H. 8. took away clergy from killing with malice aforethought, which since that time has always been a necessary part of the legal definition of murder. Sir E. Coke says, indeed, in his Commentary on the stat. of Marlberge, c. 26. that at common law the judgment of death was awarded in all cases of excusable homicide; but in this opinion he seems clearly to be wrong, and is contradicted by both Hale and Foster. He seems to found his opinion upon the words of the statute of Marlberge, and on a misapprehension of the meaning of the word "*murdram*," as there used. The statute enacts, "*Murdrum de cetero non adjudicetur coram justiciariis ubi infortium tantummodo adjudicatum est: sed locum habeat murdram ac interfecit per feloniam tantum et non aliter.*" He seems to suppose that the word "*murdram*" was meant to express the crime of homicide, whereas it is evident it was meant to designate the fine anciently called *murdram*, which was set upon the township where any man was secretly killed. It should seem that among other abuses and exactions which the turbulence of those times had given birth to, was the improper levying the fine called *murdram* upon townships, and in cases where it ought not to have been levied; and therefore the statute of Marlberge, which passed at the close of the contest between Henry and his barons, and regulated many abuses, amongst other things, directs, c. 25. that vills should not be amerced because all above twelve years of age did not attend the court of the sheriff and coroner, and then immediately goes on, in the next chapter, that "*murdram*" shall only be adjudged in cases of felonious

In treating of homicide against a man's own life, I shall consider, FIRST, in what cases a man shall be said to be a *felo de se*: SECONDLY, what he shall forfeit for this offence.

As to THE FIRST POINT, *viz.* In what cases a man shall be said to be a *felo de se*.

*Sect. 1.* I shall take it for granted that, in this as well as in all other felonies, the offender ought to be of the age of discretion, and *compos mentis*; and therefore that an infant killing himself under the age of discretion, or a lunatic during his lunacy, cannot be a *felo de se*. 1 Hale, 411.  
Crom. 30, 31.  
Dalt. c. 92.  
3 Inst. 54.

*Sect. 2.* But here I cannot but take notice of a strange notion which has unaccountably prevailed of late, that every one who kills himself must be *non compos* of course; for it is said to be impossible that a man in his senses should do a thing so contrary to nature and all sense and reason. 3 Mod. 100.

*Sect. 3.* If this argument be good, *self-murder* can be no crime, for a madman can be guilty of none: but it is wonderful that the repugnancy to nature and reason, which is the highest aggravation of this offence, should be thought to make it impossible to be any crime at all, which cannot but be the necessary consequence of this position, that none but a madman can be guilty of it. May it not with as much reason be argued, that the murder of a child or of a parent is against nature and reason, and consequently that no man in his senses can commit it? But has a man therefore no use of his reason, because he acts against right reason? Why may not the passions of grief and discontent tempt a man knowingly to act against the principles of nature and reason in this case, as those of love, hatred, and revenge, and such like, are too well known to do in others? Plow. 261.  
Comb. 2, 3.

*Sect. 4.* However, our laws have always had such an abhorrence of this crime, that not only he who kills himself with a deliberate and direct purpose of so doing, but also in some cases he who maliciously attempts to kill another, and in pursuance of such attempt unwillingly kills himself, shall be adjudged in the eye of the law a *felo de se*. For wherever death is caused by an act Dalt. c. 111.  
44 Ass. 55.  
B. Cor. 12. 14.  
3 Inst. p. 54.

lous homicide; so that it appears to have relation more to the fine than to the crime. Besides, we learn from Bracton, c. 15. s. 6. that different customs prevailed in different places as to what homicides should subject the vill to the fine of *murdrum*, and it might be another object of the statute to render the law upon this point uniform throughout England, by enacting that *murdrum* should only have place in cases of felonious homicide. But although excusable homicide was not attended with forfeiture of life, yet the party committing the deed forfeited all his goods. But this is doubted by Sir M. Foster (Discourse on Homicide), who thinks the forfeiture was not of all the goods; but whether of all or of part, the statute of Gloucester enacts, that if homicide "*suit trouve per pay que il le fist soy defend' ou per misadventure donque fra les justices assavoir un roy et le roy lui la fra sa grace si lui plaist.*" After this statute, if the verdict found the fact of *misadven-*

*ture or se defend'*, upon the same being returned into Chancery the party had a charter of pardon as a matter of course; for the words, if the king please, "*si lui plaist,*" Sir Ed. Coke says, are but words of reverence to the king, for the king is *ex merito justicie* to grant the pardon. Sir M. Foster, however, takes another view of this statute, and thinks the party had his pardon as matter of course before the passing this statute, and that the object of this enactment was to have the return made by the justices in eyre, and not by the sheriff or coroner upon the writ *de odio et atia*, as was the custom at common law. This course of finding special verdicts of the facts is abandoned in modern times; and in all questions of homicide the practice now is, if the facts proved do not amount to murder or manslaughter, for the court to direct a general verdict of acquittal. (Foster on Homicide, c. 4.)



act done with a murderous intent, it makes the offender a murderer; and therefore, if *A.* discharge a gun at *B.* with an intent to kill him, and the gun breaks and kills *A.*; or if *A.* strike *B.* to the ground, and then hastily falling upon him wound himself with a knife which *B.* happens to have in his hand and die, in both these cases *A.* is *felo de se*, for he is the only agent.

Stann. 16.  
Pult. 119.  
Vide 1 Hale,  
413 & 493,  
upon this case;  
which he contends  
is misrepresented both  
by Dalton and  
Coke, and that  
it was adjudged  
HOMICIDE *per*  
*infortunium*.

*Sect. 5.* But if *B.*, being so assaulted, had been driven to the wall, and holden up a pitch-fork or knife, standing in his defence, and *A.* had hastily run upon the same and been slain, *B.* should be adjudged to kill him in his own defence. And for the same reason perhaps in the case above, if *B.* after he had fallen to the ground, had holden up a knife or sword in his defence, and *A.* had fallen thereon and been slain, *B.* should be adjudged to kill him *se defendendo*; for *B.* exerts his strength in his own defence, and by so doing occasions the mortal wound received by *A.*

Keilw. 136.

Moor, 754.

*Sect. 6.* He who kills another upon his desire or command, is, in the judgment of the law, as much a murderer as if he had done it merely of his own head, and the person killed is not looked upon as a *felo de se*, inasmuch as his assent was merely void, as being against the laws of God and man: but where two persons agree to die together, and one of them, at the persuasion of the other, buys ratsbane, and mixes it in a potion, and both drink of it, and he who bought and made the potion survives by using proper remedies, and the other dies, perhaps it is the better opinion, that he who dies shall be adjudged a *felo de se*, because all that happened was originally owing to his own wicked purpose, and the other only put it in his power to execute it in that particular manner.

As to THE SECOND POINT, *viz.* What such an offender shall forfeit.

S. P. C. 188,  
189. 262, 263.  
1 Hale, 413.  
Finch, 216.  
Crom. 31.  
3 Inst. 55.  
19 II. 6. 47.  
8 E. 4. 24.  
Raym. 7.  
Plow. 243. 259.  
262. 323.  
1 Comm. 190.  
193.

*Sect. 7.* It seems clear that he shall forfeit all chattels, real or personal, which he hath in his own right, and also all such chattels real whereof he is possessed either jointly with his wife, or in her right; and also all bonds and other personal things in action belonging solely to himself; and also all personal things in action, and, as some say, entire chattels in possession, to which he was entitled jointly with another, on any account except that of merchandize: but it is said, that he shall forfeit a moiety only of such joint chattels as may be severed and nothing at all of what he was possessed of as executor or administrator.

1 Hale, 413.  
Plow. 261, 262.

*Sect. 8.* However, the blood of a *felo de se* is not corrupted, nor his lands of inheritance forfeited, nor his wife barred of her dower.

5 Co. 110.  
3 Inst. 54.  
1 Saund. 362.  
1 Hale, 414.  
1 Sid. 150.  
162. 2 Mod. 53.

*Sect. 9.* Also no part of the personal estate is vested in the king, before the self murder is found by some inquisition; and consequently the forfeiture thereof is saved by a pardon of the offence before such finding.

Plow. 260.  
5 Co. 110.  
1 Hale, 412.  
4 Com. 190.

3 Mod. 100. 241, 242. Con. 1. Lev. 8. 1 Keb. 67, 68. 4 Comm. 190.  
*Sect. 10.* But if there be no such pardon, the whole is forfeited immediately after such inquisition, from the time such mortal wound was given, and all intermediate alienations are avoided.

*Sect.*

**Sect. 11.** And such inquisitions ought to be by the coroner *super visum corporis*, if the body can be found; and an inquisition so taken, as some say, cannot be traversed. 3 Inst. 55. 47 Ed. 3. 7. See B. 2. c. 9. s. 52. 1 Hale, 414 to 417.  
 Far. 16. Salk. 190. 377. Carth. 72. Skin. 45. Stamf. 183. 3 Mod. 80. 238. 1 Mod. 82. 2 Keb. 859. 1 Vent. 181, 182. 2 Vent. 38. 2 Jones, 198. 2 Hale, 59. Lev. 8. Sid. 150.

**Sect. 12.** But if the body cannot be found so that the coroner, who has authority only *super visum corporis*, cannot proceed, the inquiry may be by justices of the peace, who by their commission have a general power to inquire of all felonies; or in the king's bench, if the felony were committed in the county where the said court sits; and such inquisitions are traversable by the executor, &c. 3 Inst. 55. 2 Lev. 141. 1 Hale, 414. Carth. 73. 1 Burr. 18. 1 Freem. 420. 1 Roll. 217. 1 Sid. 101, 144.

**Sect. 13.** Also all inquisitions of this offence, being in the nature of indictments, ought particularly and certainly to set forth the circumstances of the fact; as the particular manner of the wound, and that it was mortal, &c. and in the conclusion add, that the party in such manner murdered himself. Salk. 377. 7 Mod. 16. 1 Mod. 82.

**Sect. 14.** Therefore if either the premises be insufficient, as if it be found that the party flung himself away into the water, *et sic seipsum emergit*, which is nonsense, because "*emerge*" signifies only to rise out of the water: or if there be wanting the proper conclusion, *et sic seipsum murtheravit*, the inquisition is not good. 2 Lev. 140, 152. 3 Mod. 100. 12 Mod. 112. Vide Salk. 377.

**Sect. 15.** Yet if it be full in substance, the coroner may be served with a rule to amend a defect in form. 1 Sid. 225, 259. 3 Mod. 101. 1 Keb. 907.  
 Fitzg. 6. See 1 Saund. 273, for process from THE CROWN-OFFICE on such an inquisition against a debtor of a *felo de se*.

## CHAP. X.

### OF JUSTIFIABLE HOMICIDE.

**HOMICIDE** against the life of another either amounts to FELONY, or does not. That which amounts not to felony, is either *justifiable*, and causes no forfeiture at all, or *excusable*, and causes the forfeiture of the party's goods.

Of JUSTIFIABLE HOMICIDE I shall premise these general rules.

**Sect. 1.** *First*, It must be owing to some *unavoidable necessity* to which the person who kills another must be reduced without any manner of fault in himself. Vid. sect. 22.

**Sect. 2.** *Secondly*, There must be no malice coloured under pretence of necessity; for wherever a person who kills another acts in truth upon malice, and takes occasion from the appearance of necessity, to execute his own private revenge, he is guilty of murder. 2 Roll. 120. Kely. 23. Bract. l. 3. c. 4. 21 Edw. 1. de Mal. in Parcic.

**Sect. 3.** *Thirdly*, According to the opinion of the old books (*a*), which

(*a*) 22 Ass. 55. 37 Ass. pl. 41. 27 H. 6. 20, 21. Dalt. 150. B. App. 5, 129. B. Cor. 57. 87.

(b) 35 Hcn. 6.  
11. 58.  
2 Inst. 316.  
Co. Litt. 283.  
1 Hale, 478.

which in this respect seems to be contradicted by others more modern (*b*), it seems, that one may set forth a fact, amounting to justifiable homicide, in a special plea to an indictment or appeal of murder; and that the same being found true, he shall be dismissed, without being arraigned, or enforced to plead *not guilty*. And indeed it seems extremely hard, that a sheriff or judge who condemns or executes a criminal, &c. should be forced, on a frivolous prosecution, to hold up their hands at the bar for it, &c. "But it is agreed, that no one can plead a fact amounting to homicide *se defendendo*, or by misadventure, but that, in such a case, the defendant must plead *not guilty*, and give the special matter in evidence: and it is also agreed, that where a special fact, amounting to justifiable homicide, is found by the jury, the party is to be dismissed, without being obliged to purchase any pardon, &c.

JUSTIFIABLE HOMICIDE is either of a public or of a private nature. Justifiable homicide of a *public nature* is such as is occasioned by the due execution or advancement of public justice. —That of a *private nature* is such as happens in the just defence of a man's person, house, or goods.

OF JUSTIFIABLE HOMICIDE in the due execution of *public justice*, the following rules must be observed.

Dalt. c. 98.  
1 Hale, 497.  
10 Co. 76.  
22 E. 4. 33.

*Sect. 4. First*, The judgment, by virtue whereof any person is put to death, must be given by one who has jurisdiction in the cause; for otherwise both judge and officer may be guilty of felony.

1 Hale, 497.  
500.  
3 Inst. 48.  
5 Co. 106.  
Cro. Car. 98.  
Moor, 333.  
4 Comm. 178.

*Sect. 5.* And therefore, if the court of common pleas give judgment on an appeal of death, or justices of peace on an indictment of treason, and award execution, which is executed, both the judges who give, and the officers who execute the sentence, are guilty of felony, because, these courts having no more jurisdiction over these crimes than mere private persons, their proceedings thereon are merely void, and without any foundation.

Dalt. c. 98.  
1 Hale, 501.

*Sect. 6.* But if the justices of peace, on an indictment of trespass, arraign a man of felony, and condemn him, and he be executed, the justices only are guilty of felony, and not the officers who execute their sentence; for the justices had a jurisdiction over the offence, and their proceedings were irregular and erroneous only, but not void.

Co. Litt. 128.

*Sect. 7. Secondly*, The judgment must be executed by the lawful officer.

2 Ass. 3.  
S. P. C. 13. 196.  
1 Hale, 497.  
11 H. 4. 12.  
Plow. 306.  
3 Inst. 131.

*Sect. 8.* Indeed it was formerly holden, that any one might as lawfully kill a person attainted of treason or felony as a wolf or any other wild beast; and anciently a person condemned in an appeal of death was delivered to the relations of the deceased, in order to be executed by them.

27 Ass. 41.  
1 Hale, 501.  
B. App. 69.  
Cor. 67. 197.  
Co. Lit. 128.  
Dalt. c. 98.

*Sect. 9.* But at this day it seems agreed, that if the judge who gives the sentence of death, and, *à fortiori*, if any private person execute the same, or if the proper officer himself do it without a lawful command, they are guilty of felony.

*Sect.*

**Sect. 10. Thirdly,** The execution must be pursuant of, and warranted by, the judgment, otherwise it is without authority; and consequently if a sheriff behead a man where it is no part of the sentence to cut off the head, he is guilty of felony (1).  
 35 H. 6. 58.  
 B. App. 5.  
 S. P. C. 13.  
 See B. 2. c. 51.  
 Finch, 31.  
 3 Inst. 52. 211.  
 1 Hale, 454. 501. 2 Hale, 411. 4 St. Tr. 129. Foster, 268.

Of JUSTIFIABLE HOMICIDE in the due advancement of public justice, I shall consider,—FIRST, in relation to criminal,—SECONDLY, in relation to civil causes.

I. HOMICIDE in the advancement of public justice in *criminal causes* may be justified in several cases.

**Sect. 11. First,** If a person, having actually committed a felony, will not suffer himself to be arrested, but stand on his own defence, or fly, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons or public officers, with or without a warrant from a magistrate, he may be lawfully slain by them.  
 22 Ass. 55.  
 B. Cor. 87. 89.  
 S. P. C. 13.  
 3 Inst. 221.  
 Dalt. c. 98.  
 Crom. 30.  
 F. Cor. 192.  
 258. 261.

1 Hale, 489. Foster, 271. *Furem si aliter capi non posset, occidere permittunt.* Sternh. de jure Goth.

**Sect. 12. Secondly,** If an innocent person be indicted of a felony, where, in truth, no felony was committed, and will not suffer himself to be arrested by the officer who has a warrant for that purpose, he may lawfully be killed by him, if he cannot otherwise be taken; for there is a charge against him upon record, to which at his peril he is bound to answer.  
 See authorities above cited.  
 F. Cor. 179.  
 261.

**Sect. 13. Thirdly,** If a criminal, endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray.  
 1 Hale, 481.  
 494, 495. 496.

**Sect. 14. Fourthly,** If those who are engaged in a riot, or a forcible entry, or detainer, stand in their defence, and continue the force in opposition to the command of a justice of peace, &c. or resist such justice endeavouring to arrest them, the killing of them may be justified (a): and so perhaps may the killing of dangerous rioters by any private persons, who cannot otherwise suppress them or defend themselves from them, inasmuch as every private person seems to be authorised by the law to arm himself for the purposes aforesaid. (2)  
 Crom. 30. 138.  
 Staund. 13.  
 2 Inst. 52.  
 Popph. 121.  
 (a) See THE Riot Act, post. ch. Offences against the Public Peace.

**Sect. 15. Fifthly,** If trespassers in a forest, chace, park, or warren, or any inclosed ground wherein deer are kept, will not render themselves to the keepers upon an HUE AND CRY made to stand to the king's peace, but fly from, or defend themselves against them, they may be slain by force of the statute *de malefactoribus in parcis*, 21 Edw. 1. st. 2. and 3. and 4 Will. & Mary, c. 10.  
 S. P. C. 13.  
 Crom. 30.  
 Dyer, 326.  
 1 Hale, 491.  
 9 St. Tr. 315.

### Sect.

(1) That is, if the officer varieth from the judgment of his own head and without warrant or the colour of authority, but not if he is authorised by custom or by warrant from the crown. For although the king cannot by his prerogative vary the execution so as to aggravate the punishment beyond the intention of the law; yet it doth not follow, that he who may remit part of the judgment, or wholly pardon the offender, cannot mitigate his

punishment with regard to the pain or infamy of it. Foster, 267.

(2) Therefore if a stranger interpose to part combatants in an affray, giving notice to them of that intention, and they assault him, and in the struggle he should chance to kill, this would be *justifiable homicide*; for it is every man's duty to interpose for the preservation of the public peace, and for the prevention of mischief. (Foster, 272.)—But

Dalt. c. 98.  
 Plow. 9.  
 3 Inst. 221.  
 37 H. 6. 21.

*Sect. 16. Sixthly*, If either of the parties fighting in a combat allowed by law for the trial of some special cases, be slain, he who kills him is justified, and the death of the other is imputed to the just judgment of God, who is presumed to give the victory to him who fights in maintenance of the truth.

II. HOMICIDE, in the advancement of justice in civil causes, may also be justified in some cases.

1 Roll, 189.  
 Foster, 270.  
 3 Inst. 56.  
 Crom. 24.  
 Dalt. c. 98.  
 1 Hale, 494.

*Sect. 17.* As where a sheriff, &c. attempting to make a lawful arrest in a civil action, or to retake one who has been arrested and made his escape, is resisted by the party, and unavoidably kills him in the affray.

4 Comm. 180.

Foster, 292.  
 Strange, 499.  
 6 St. Tr. 195.  
 Crom. 30.

*Sect. 18.* And in such case the officer is not bound to give back, but may stand his ground and attack the party.

*Sect. 19.* But no private person of his own authority can arrest a man for a civil matter, as he may for felony, &c.

1 Hale, 481.  
 Foster, 271.

*Sect. 20.* Neither can the sheriff himself lawfully kill those who barely fly from the execution of any civil process.

Puff. L. of N.  
 455.

OF JUSTIFIABLE HOMICIDE of a private nature, in the just defence of a man's person, house, or goods, I shall shew, FIRST, in what cases the killing of a wrong-doer may be justified by reason of such defence. SECONDLY, where the killing of an innocent person may be so justified.

24 H. 8. c. 5.  
 Dalt. c. 93.  
 1 Hale, 486,  
 487, 493, 494.  
 S. P. C. 14.  
 B. Cor. 100.  
 F. Cor. 179.  
 192. 261. 305.  
 C. Car. 544.  
 26 Ass. 23.  
 Crom. 26.  
 Kely, 128, 129.  
 Fos. 271. 275.  
 9 Ann. c. 16.  
 (a) Vide sect.  
 25.

*Sect. 21.* AND FIRST, the killing of a wrong-doer, in the making of such defence, may be justified in many cases: as where a man kills one who assaults him in the highway to rob or murder him; or the owner of a house, or any of his servants or lodgers, &c. kill one who attempts to burn it, or to commit in it murder, robbery, or other felony (a); or a woman kills one who attempts to ravish her (3); or a servant coming suddenly and finding his master robbed and slain, falls upon the murderer immediately and kills him; for he does it in the height of his surprize, and under just apprehensions of the like attempt upon himself: but in other circumstances he could not have justified the killing of such an one, but ought to have apprehended him, &c.

Crom. 27.  
 Sum. 56.  
 1 Hale, 405.  
 440, 441.

*Sect. 22.* Neither shall a man in any case justify the killing another by a pretence of necessity, unless he were himself wholly without fault in bringing that necessity upon himself; for if a man, in defence of an injury done by himself, kill any person whatsoever, he is guilty of manslaughter at least; as where divers rioters

in all these cases there must be an apparent necessity on the officer's side, that the party could not be arrested or apprehended; that the riot could not be suppressed; that the prisoners could not be kept in hold, that the deer-stealers could not but escape, unless such homicide were committed; otherwise without such absolute necessity it is not justifiable. 4 Comm. 180.

(3) The injury intended can never be repaired or forgotten; and nature, to render the sex amiable, hath implanted in the female heart a quick

sense of honour, the pride of virtue, which kindleth and inflameth at every such instance of brutal lust. Fos. 274. Bac. El. 34. Prin. P. L. 211.—So too the feelings of a parent or a husband which involuntarily actuate them at the moment to kill the forcible ravisher of a wife or a daughter's virtue, are justifiable. 1 Hale, 488. And no doubt the forcibly attempting a crime of a still more detestable nature, may be equally resisted by the death of the unnatural aggressor. 4 Comm. 181.

rioters wrongfully detain a house by force, and kill those who attack it from without, and endeavour to burn it.

*Sect. 23.* Neither can a man justify the killing another in defence of his house or goods, or even of his person, from a bare private trespass; and therefore he that kills another, who claiming a title to his house attempts to enter it by force, and shoots at it, or that breaks open his windows in order to arrest him, or that persists in breaking his hedges after he is forbidden, is guilty of *manslaughter*; and he who in his own defence kills another that assaults him in his house in the day-time, and plainly appears to intend to beat him only, is guilty of homicide *se defendendo*, for which he forfeits his goods, but is pardoned of course; yet it seems that a private person, and, *à fortiori*, an officer of justice, who happens unavoidably to kill another in endeavouring to defend himself from, or to suppress dangerous rioters, may justify the fact, inasmuch as he only does his duty in aid of the public justice.

Sunn. 40. 57.  
C. Car. 538.  
Dalt. c. 98.  
1 Hale, 483,  
486. 488.  
Foster, 273.

Pult. 119.  
Sunn. 40.  
Crom. 28.  
3 Inst. 138.  
Poph. 121.

*Sect. 24.* And I can see no reason why a person who without provocation is assaulted by another in any place whatsoever, in such a manner as plainly shews an intent to murder him, as by discharging a pistol, or pushing at him with a drawn sword, &c. may not justify killing such an assailant, as much as if he had attempted to rob him; for is not he who attempts to murder me more injurious than he who barely attempts to rob me? And can it be more justifiable to fight for my goods than for my life? And it is not only highly agreeable to reason that a man in such circumstances may lawfully kill another, but it seems also to be confirmed by the general tenor of our law-books; which, speaking of homicide *se defendendo*, suppose it done in some quarrel or affray. From whence it seems reasonable to conclude, that where the law judges a man guilty of homicide *se defendendo*, there must be some precedent quarrel in which both parties always are, or at least may justly be supposed to have been, in some fault, so that the necessity to which a man is at length reduced to kill another, is in some measure presumed to have been owing to himself: for it cannot be imagined that the law, which is founded on the highest reason, will adjudge a man to forfeit all his goods, and put him to the necessity of purchasing his pardon, without some appearance of a fault. And though it may be said that there is none in *chance-medley*, and yet that the party's goods are also forfeited by that, I answer, that *chance-medley* may be intended to proceed from some negligence, or at least want of sufficient caution in the party who is so unfortunate as to commit it, so that he doth not seem to be altogether faultless. Besides, one of the reasons given in our law-books for which homicide *se defendendo* forfeits goods, is because thereby a true man is killed; but it seems absurd, that he who apparently attempts to murder another, which is the most heinous of all felonies, should be esteemed such, when those who attempt other felonies, which seem to be much less criminal, are allowed to be killed as downright villains, not deserving the protection or regard of the law.

Bendlow, 47.  
1 And. 11.  
Kely. 128, 129.  
1 Hale, 481.  
484.  
Foster, 274.

Crom. 27, 28.  
Dalt. c. 98.  
S. P. C. 15.  
3 Inst. 57.  
Vide F. Cor.  
231. 236, 287.  
Bacon, 33.

S. P. C. 15.  
Dalt. c. 98.  
Foster, 288.

*Sect. 25.* However, perhaps in all these cases there ought to

N. Bendl. 47.  
be

Crom. 27, 28.  
Dalt. c. 96.  
Sum. 42.  
Foster, 273.

be a distinction between an assault in the highway and an assault in a town. For in the first case it is said, that the person assaulted may justify killing the other without giving back at all; but that in the second case he ought to retreat as far as he can without apparently hazarding his life, in respect of the probability of getting assistance.

Puff. l. 2. c. 5.  
Bract. 159.  
1 Hale, 437.  
1 And. 41.  
Kely. 51.  
Prin. P. L. 211.  
26. Ass. 23.

† And by 24 Hen. 8. c. 5. it is recited, “Forasmuch as it hath been in question and ambiguity, that if any evil-disposed person or persons do attempt feloniously to rob or murder any person or persons in or nigh any common highway, cartway, horseway, or footway, or in their mansions, messuages, or dwelling places; or that feloniously do attempt to break open any dwelling-house in the night-time; should happen, in the prosecution of such felonious intent, to be slain by him or them whom the said evil-doers should so attempt to rob or murder, or by any person or persons being in their dwelling-house, which the same evil-doers should so attempt burglarly to break by night, if the said person so happening in such cases to slay the offender so attempting to commit murder or burglary, should forfeit or lose his goods or chattels for the same, as any other person should do that by chance medley should happen to kill another in his or their defence.” For the declaration of which ambiguity and doubt it is enacted, “That whoever shall be indicted or appealed of or for the death of such evil-disposed person or persons attempting to murder, rob, or burglarly to break mansion-houses as aforesaid, shall not forfeit any lands, tenements, goods, or chattels, but shall be thereof, and for the same, fully acquitted and discharged.” (1)

Dalt. c. 96.  
Bac. Elem. c. 5.  
4 Com. 137.

*Sect. 26. SECONDLY,* Also the killing of an innocent person in defence of a man's self, is said to be justifiable in some special cases; as if two be shipwrecked together, and one of them get upon a plank to save himself, and the other also, having no other means to save his life, get upon the same plank, and finding it not able to support them both, thrust the other from it, whereby he is drowned, it seems that he who thus preserves his own life at the expense of that of another, may justify the fact by the inevitable necessity of the case.

C. Car. 538.  
March, 5.  
1 Hale, 42, 43.

*Sect. 27.* If a man be awakened in the night with an alarm that thieves are in his house, and searching for them in the dark with his sword drawn, happen to kill a person lying hid in a part of the house, who in truth had no ill design, and was brought thither by a servant in order to assist in cleaning the house, it seemeth that he may justify the fact, inasmuch as it hath not the appearance of a fault.

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(4) Not only the master of a house but a lodger or sojourner who kills an assailant intending to commit murder or robbery, is within the protection of this statute. *C. Car. 541.* But this reaches not to any crime unaccompanied with force, as picking of pockets; or to the breaking open of any house in the day time, unless it carry with it an attempt of robbery or arson. 4 *Comm.* 180. Vide 1 Hale, 488. And although it is the highest possible inva-

sion of property, a man is not justifiable in killing another whom he taketh in adultery with his wife, for it savours more of sudden revenge than of self-preservation; but this law hath been executed with great benignity. *Vent.* 159. *Ray.* 212. *Prin. P. L.* 212. If the husband, however, detect the ravisher in the attempt, the wife calling for assistance, it is excusable, *se defendendo.* 1 Hale, 486.

## CHAP. XI.

## OF EXCUSABLE HOMICIDE.

**EXCUSABLE** homicide is either *per infortunium*, or *se defendendo*.—In treating of which I shall first shew the nature of each of them distinctly, and then consider those properties wherein they both agree.

*Sect. 1. HOMICIDE per infortunium*, or by misadventure, is where a man in doing a lawful act (1), without any intent of hurt, unfortunately chances to kill another.

See 1 Hale, 38  
to 41. 393. 492.  
Sum. 31.  
1 Hale, 472.  
St. Tr. 3301.  
Strange, 462.  
Prin. P. L. 214.

*Sect. 2. As First*, Where a labourer being at work with a hatchet, the head thereof flies off, and kills one who stands by.

6 Ed. 4. 7.  
B. Cor. 59. 148.

*Sect. 3. Secondly*, Where a third person whips a horse on which a man is riding, whereupon he springs out, and runs over a child and kills him, in which case the rider is guilty of homicide *per infortunium*; and he who gave the blow, of manslaughter.

Sma. 58. 59.  
1 Hale, 476.  
1 Comm. 182.

*Sect. 4. Thirdly*, Where a workman, having first given loud warning to all persons to stand clear, flings down a piece of timber from a private house standing out of the road, and thereby kills one who happens to be underneath:—but if any person fling down such a piece of timber idly in play, or even a workman fling it down in the streets of a town, where the danger is apparent in respect of the number of people continually passing by, he is guilty of manslaughter.

1 Hale, 472.  
475.  
Kely. 10.  
Bract. l. 3. c. 4.  
Dalt. c. 96.  
B. Cor. 229.

*Sect. 5. Fourthly*, Where a schoolmaster in correcting his scholar, or a father his son, or a master his servant, or an officer in whipping a criminal condemned to such punishment, happen to occasion his death, yet if such persons in their correction be so barbarous as to exceed all bounds of moderation, and thereby cause the party's death, they are guilty of *manslaughter* at the least (2); and if they make use of an instrument improper for correction, and apparently endangering the party's life, as an iron bar, or sword, &c. or kick him to the ground, and then stamp on his belly and kill him, they are guilty of murder.

1 Hale, 45 b. 473.  
Bract. l. 1. c. 4.  
Crom. 28.  
Dalt. c. 96.  
Keilw. 136.  
Skin. 668.  
Kely. 65.  
5 M. 287, &c.  
Foster, 262.

*Sect. 6. Fifthly*, Where one lawfully using an innocent diversion, as shooting at butts, or at a bird, &c. by the glancing of an arrow, or such like accident, kills another.

Keilw. 103.  
B. Cor. 148.  
Kely. 41.  
Prin. P. L. 226.  
3 Wils. 407.

*Sect. 7. Sixthly*, Where a person happens to kill another in playing a match of foot-ball, wrestling, or such like sports which are attended with no apparent danger of life, and intended only for the trial, exercise, and improvement, of the strength, courage, and activity of the parties.

Keilw. 103. 136.  
Crom. 29.  
11 H. 7. 23.  
Foster, 260.

*Sect. 8. Seventhly*, Where one kills another in fighting at barriers

11 H. 7. 23.  
riers

(1) Whether the act must be strictly lawful to bring the homicide within this description, vide Foster, 258, 259. 3 Inst. 56.

(2) So when an officer of the impress service fires at a boat in order to bring her to, and kills a man,

it is impossible that the offender should be made guilty of more than manslaughter, especially if he fires in the manner usual upon such occasions. L. Mansfield, Cowp. 832.



3 Inst. 160.  
1 Hale, 473.  
Keilw. 108.  
136.

Dalt. c. 96. Hob. 134. Crom. 29. B. Cor. 22. Foster, 261.

riers or tilting by the king's command, which, by the better opinion, secures him from being guilty of felony, by reason of any such unfortunate accident.

(a) 9 St. Tr.  
315.

Hob. 134.  
Dalt. c. 98.  
Alecyn, 12.  
1 Hale, 472,  
473.  
Foster, 292.  
Strange, 499.  
6 St. Tr. 195.  
4 Comm. 183

† So under the 22 & 23 Car. 2. c. 25. and the 4 & 5 Will. and Mary, c. 23. made for the preservation of game, where a stranger assisting a gamekeeper to seize nets even upon the ground of a third person, and, during the transaction, the gun of the stranger accidentally goes off, by which one of the poachers is killed, this is only *chance-medley*, for the duty of the gamekeeper will authorize the trespass of the stranger. (a)

*Sect. 9.* But if a person kill another by shooting at a deer, &c. in a third person's park, in the doing whereof he is a trespasser; or by shooting off a gun, (3) or throwing stones, in a city or highway, or other place where men usually resort, or by throwing stones at another wantonly in play, which is a dangerous sport, and has not the least appearance of any good intent, or by doing any other such idle action as cannot but endanger the bodily hurt of some one or other; or by tilting or playing at handsword without the king's command, or by parrying with naked swords covered with buttons at the points, or with swords in the scabbards, or such like rash sports, which cannot be used without the manifest hazard of life, he is guilty of manslaughter.

Kely. 117.  
1 Hale, 39. 475.

*Sect. 10.* And if a man happen to kill another in the execution of a malicious and deliberate purpose to do him a personal hurt, by wounding or beating him; or in the wilful commission of any unlawful act, which necessarily tends to raise tumults and quarrels, and consequently cannot but be attended with the danger of personal hurt to some one or other; as by committing a riot, robbing a park, &c. he shall be adjudged guilty of murder.

3 Inst. 56.  
Kely. 117.  
1 Hale, 475.  
6 St. Tr. 222.  
Prin. P. L. 226.

*Sect. 11.* And *à fortiori* he shall come under the same construction, who in the pursuance of a deliberate intention to commit a felony, chances to kill a man, as by shooting at tame fowl, with an intent to steal them, &c. for such persons are by no means favoured, and they must at their peril take care of the consequence of their actions; and it is a general rule, that wherever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony which he actually commits.

1 Hale, 476.  
3 Inst. 57.  
Dalt. c. 93.  
Foster, 262.  
11 H. 7. 23. a.  
B. Cor. 229.  
Dalt. c. 97.

*Sect. 12.* Neither shall he be adjudged guilty of a less crime who kills another in doing such a wilful act as shews him to be as dangerous as a wild beast, and an enemy to mankind in general; as by going deliberately with a horse used to strike, or discharging a gun among a multitude of people, or throwing a great stone or piece of timber from a house into a street, through which he knows that many are passing; and it is no excuse that he intended no harm to any one in particular, or that he meant to do it only for sport, or to frighten the people, &c.

*Sect.*

(3) Therefore where the defendant came to town in a chaise, and before he got out of it he fired his pistols, which by accident killed a woman, King C. J. ruled it to be but manslaughter. Str. 481.

*Sect. 13.* And now I am to consider HOMICIDE *se defendendo*, S. P. C. 15. which seems to be where one, who has no other possible means of preserving his life from one who combats with him on a sudden quarrel, or of defending his person from one who attempts to beat him (especially if such attempt be made upon him in his own house), kills the persons by whom he is reduced to such an inevitable necessity. 4 Comm. 184.

*Sect. 14.* And not only he who on an assault retreats to a wall, or some such streight, beyond which he can go no farther, before he kills the other, is judged by the law to act upon unavoidable necessity; but also he who being assaulted in such a manner, and such a place, that he cannot go back without manifestly endangering his life, kills the other without retreating at all. B. Cor. 125. 13 Ass. 31. 3 Inst. 56. Kely. 128. Foster, 273.

*Sect. 15.* And notwithstanding a person who retreats from an assault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *se defendendo* only. Sum. 41. Crom. 28. S. P. C. 15.

*Sect. 16.* And an officer who kills one that resists him in the execution of his office, and even a private person, that kills one who feloniously assaults him in the highway, may justify the fact without ever giving back at all. 5 Inst. 56. Crom. 28. 9 St. Tr. 335. Str. 499. 6 St. Tr. 195. Foster, 292.

*Sect. 17.* According to some good opinions, even he who gives another the first blow on a sudden quarrel, if he afterwards do what he can to avoid killing him, is not guilty of felony. Yet such a person seems to be too much favoured by this opinion, inasmuch as the necessity to which he is at last reduced, was at the first so much owing to his own fault. S. P. C. 15. Crom. 28. 1 Hale, 479. Dalt. c. 93. Kely. 58. Foster, 276.

*Sect. 18.* And it is now agreed, that if a man strike another upon malice prepense, and then fly to the wall, and there kill him in his own defence, he is guilty of murder.

Thus far of each kind of EXCUSABLE HOMICIDE distinctly considered.—And now I am to consider those properties wherein they both agree. 4 Comm. 186. 188.

*Sect. 19.* AND FIRST, it seems clear, that neither of these homicides are felonies, because they are not accompanied with a felonious intent, which is necessary in every felony. 2 Inst. 149. 3 Inst. 56. F. Cor. 116. 4 Comm. 182.

*Sect. 20.* And from hence it seems plainly to follow, that they were never punishable with loss of life; and the same also farther appears from the writ *de odio et alia*, by virtue whereof, if any person committed for killing another were found guilty of either of these homicides, and no other crime, he might be bailed; and indeed it seems to be against natural justice to condemn a man to death for what is owing rather to his misfortune than his fault. 11 H. 4. 98. B. Cor. 80. 15 Ass. 7. Post, s. 24. Fos. 284, 285.

*Sect. 21.* It is true indeed that some of our best authors have argued from the statute of Marlebridge, 52 Hen. 3. c. 26. which enacts, that "*Murdrum de cetero non adjudicetur, ubi infortunium tantummodo adjudicatum est, &c.*" that before this statute homicides 2 Inst. 56. S. P. C. 16. 1 Hale, 447.

homicides by misadventure, or *se defendendo*, were adjudged murder, and consequently punished by death.

Bract. 134.  
Kely. 121.  
See 1 Hale, 425.  
448.

*Sect. 22.* But to this it may be answered, that murder in those days signified only the private killing of a man by one who was neither seen nor heard by any witness, for which the offender, if found, was to be tried by ordeal, and if he could not be found, the town in which the fact was done was to be amerced sixty-six marks, unless it could be proved that the person killed was an *Englishman*; for otherwise it was presumed that he was a *Dane* or a *Norman*, who in those days were often privately made away with by the *English*. And it being a doubt whether homicide by misadventure, &c. were to be esteemed murder in this sense, it seems to have been the chief intent of the makers of this statute to settle this question.

Bract. 135.

Sum. 98, 99.  
2 Inst. 315.  
Dalt. c. 98.  
1 Hale, 477.  
Or they may be brought up by *habeas corpus*, and bailed.

*Sect. 23.* SECONDLY, It is certain, however, that notwithstanding neither of these offences be felonies, yet a person guilty of them is not bailable by justices of peace, but must be committed till the next coming of the justices of eyre or gaol-delivery.

Reg. 133.  
2 Inst. 42, 315.  
9 Co. 56.  
4 Inst. 182.  
Bract. 123.  
Fleta, b. 1. c. 25.  
S. P. C. 77.  
2 Inst. 15, 315.

*Sect. 24.* Indeed anciently a person committed for the death of a man might sue out the writ *de odio et atia*, which by *Magna Charta*, c. 26. is grantable without fee; and if thereon, by an inquest taken by the sheriff, he were found to have done the fact by misadventure, or *se defendendo*, he might be mainprized by twelve men, upon the writ *de ponendo in ballium*. But such writs and enquiries were taken away by the *statute of Gloucester*, c. 9. and the statute 28 Edw. 3. c. 9. And though perhaps they were again revived by the 42 Edw. 3. c. 1. which makes all statutes contrary to *Magna Charta* void; yet at this day they seem to be obsolete, and indeed useless, inasmuch as the party may probably be sooner delivered in the usual course, by the coming of the justices of gaol-delivery.

9 Co. 56.  
Co. Bail and Mainp. c. 10.  
Foster, 285.  
and vide 31 Car. 2. c. 2.

Ante, c. 10. s. 3.  
1 Hale, 478.  
1 H. 7. 2.  
Keilw. 53, 108.  
2 Inst. 316.  
S. P. C. 15, 16.  
F. Cor. 297.  
354, 361.  
Dalt. c. 96, 98.  
F. N. B. 246.  
Foster, ch. 4.

*Sect. 25.* THIRDLY, It is also agreed, that no one can excuse the killing another, by setting forth in a special plea, that he did it by misadventure, or *se defendendo*, but that he must plead *not guilty*, and give the special matter in evidence. And that where-ever a person is found guilty of such homicide, either upon a special indictment for the same, or by a verdict setting forth the circumstances of the case on a general indictment of murder or homicide, he shall be discharged out of prison upon bail, and forfeit his goods; but that upon removing the record by *certiorari* into chancery, he shall have his pardon of course, without staying for any warrant from the king to that purpose, as shall be more fully shewn in the second book, ch. 37. sect. 1.

## CHAP. XII.

## OF MANSLAUGHTER.

**HOMICIDE** against the life of another, amounting to felony, is either with or without malice. Foster, c. 5.  
Dis. 2d.

*Sect. 1.* That which is without malice is called *manslaughter*, or sometimes *chance-medley*, by which we understand such killing as happens either on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all. 4 Comm. 186.  
191.  
Prin. P. L. 215.  
219. 224.  
3 Inst. 55, 57.  
Dalt. c. 94.  
Sum. 56, 57.  
1 Hale, 466.

*Sect. 2.* And from hence it follows, that there can be no accessories to this offence before the fact, because it must be done without premeditation. Sum. 217.  
B. 2. c. 29. s. 24.

*Sect. 3.* But the learning relating to this head being for the most part co-incident with that of others, it will be superfluous to enlarge on it here; and therefore I shall refer the reader to other chapters for the particular case; as to the following chapter of murder, for those concerning duelling; (*a*) and for such as happen in a riot, &c.; (*b*) and to the chapter on excusable homicide, (*c*) for such as fall out in the execution of a rash unlawful action. Co. Lit. 127.  
Kely. 55. 135.  
1 Hale, 456.  
  
(a) Ch. 13.  
s. 21 to 32.  
(b) Ch. 13.  
s. 47 to 49.  
(c) Ch. 11.  
s. 6 to 13.

*Sect. 4.* But there is a particular kind of manslaughter proper to be considered here, from which the benefit of the clergy is taken away by 1 Jac. 1. c. 8. (*d*) which enacts, that "where any person shall stab or thrust any person or persons that hath not then any weapon drawn, or that hath not then first stricken, the party which shall so stab or thrust, so as the person or persons so stabbed or thrust shall thereof die within the space of six months then next following, although it cannot be proved that the same was done of malice forethought." (d) See Skinn.  
668.  
Id. Ray. 140.  
845.  
7 Mod. 133.  
Foster, 297. and  
4 Bl. Com. 193.  
for the reason  
of passing this  
act, which is

continued by the 17 Car. 1. c. 4. "till some other act shall be made touching the continuance or discontinuance thereof"

*Sect. 5.* It is generally holden, that this statute is but declarative of the common law, and in the construction thereof the following points have been resolved. 1 Bulst. 87.  
Kely. 55.  
1 Hale, 456.  
Fos. 298.

*Sect. 6. First,* That wherever a person who happens to kill another was struck by him in the quarrel before he gave the mortal wound, he is out of the statute though he himself gave the first blow. Bryant's Case,  
1 Jon. 340.  
But see Skin.  
668, where  
Lord Holt ques-  
tions this case.

*Sect. 7. Secondly,* That he only who actually gives the stroke, and not any of those who may be said to do it by construction of law, as being present, and aiding and abetting the fact, are within the statute; from whence it follows, that if it cannot be proved by whom the stroke was given, none can be found guilty within the statute. 1 Hale, 468.  
2 Hale, 514.  
Alcyn, 44.  
See b. 2. c. 33.  
s. 98.  
Styles, 86.  
Salk. 542, 543.  
Prin. P. L. 232.  
Fost. 301.

*Sect.*

1 Jones, 452.  
confirmed by  
Holt in Maw-  
gridge's case,  
Kely. 131.  
Skin. 668.  
3 Lev. 266.  
255.

*Sect. 8. Thirdly,* That the killing of a man with a hammer, or such like instrument, which cannot come properly under the words "thrust" or "stab" is not a killing within the statute.— But it seems, that the discharging a pistol, or throwing a pot, or other dangerous weapon at the party, is within the equity of the words, "having a weapon drawn;" for penal statutes are construed strictly against the subject, and favourably and equitably for him.

See b. 2. c. 25.  
s. 117.  
Sum. 58. 266.  
Alley, 47.

Cro. Jac. 282.

*Sect. 9. Fourthly,* That there is no need to lay the conclusion of the indictment *contra formam statuti*, because the statute makes no new offence, but only takes away the privilege of the clergy from an old one, and leaves it to the judgment of the common law; from whence it follows, that a person indicted on the statute may be found guilty of manslaughter generally. Also from the same ground it hath been resolved, that if both an indictment lay, and a verdict also find, a fact to be *contra formam statuti*, which cannot possibly be so, as that *A.* and *B.* aided and abetted *C.* *contra formam statuti*, yet neither such indictment nor verdict are void, but *A.* and *B.* shall be dealt with in the same manner as they should have been, if those words *contra formam statuti* had been wholly omitted, because the substance of the indictment being found, they may be rejected as surplusage and senseless: and, *à fortiori*, therefore it is certain, that they shall do no hurt to an indictment or verdict containing a fact which may be within the statute.

See 1 Hale, 467  
to 470.

*Sect. 10. Fifthly,* How far the words *contra formam statuti* supply a defect in an indictment which does not specially pursue the statute, see the second book, chap. 25. sect. 116. (1)

(1) A prisoner whose case may be brought within this statute is commonly arraigned upon two indictments, one at common law for murder, and the other upon the statute. Fos. 299. But the same circumstances which at common law will serve to justify, excuse, or alleviate in a charge of murder, have always had their due weight in prosecutions grounded upon this statute. Fos. 298. As where a husband stabs an adulterer whom he seizes in the act. 1 Vent. 158. Rayn. 212. Or where a man is assaulted by thieves in his house, the thieves having no weapon drawn, nor having

struck him, and he stabs one of them. Stra. 469. Or where an officer entering violently into the chamber of a gentleman to arrest him, but without announcing the purpose for which he came, is stabbed by the gentleman with his sword. Kely. 136. 1 Hale, 470. Styles, 467. Or where upon an out-cry of thieves, a person who had innocently hidden himself in a closet, was mistaken for the thief and stabbed in the dark. 1 Hale, 42, 474. C. Car. 538. W. Jones, 429. Kely. 136. And many other instances of these kinds which have been held not within the statute.

## CHAP. XIII.

### OF MURDER. (1)

**HOMICIDE** against the life of another, amounting to **FELONY** with *malice*, is either *murder* or *petit treason*.

And

(1) The crime of murder is defined by Sir Edward Coke (3 Ins. sub tit. Murder,) to be, "Where a man of sound memory, and of the age of discretion, unlawfully killeth any reasonable creature in *rerum natura*, under the king's peace, with *malice forethought*, either express or implied by law, so as the party wounded or hurt, &c. die of the wound or hurt, &c. within a year and day af-

ter the same." And it is of the essence of the crime that it be committed with "*malice forethought*," either express or implied by law. But what is the legal meaning of the term "*malice*" we shall hereafter state, only observing for the present, that it is not confined to mean premeditated mischief against the party murdered. But though the term "*murder*" is now the description of this crime

## And first of MURDER.

*Sect. 1.* The word "murder" anciently signified only the private killing of a man, for which, by force of a law introduced by KING CANUTE for the preservation of his *Danes*, the town or hundred where the fact was done was to be amerced to the king, unless they could prove that the person slain were an *Englishman* (which proof was called *Engleschire*), or could produce the offender, &c. And in those days the open wilful killing of a man through anger or malice, &c. was not called *murder*, but *voluntary homicide*.

Dialog. de  
Search. l. 1. c.  
10. *Stiern. jure*  
*Sueo.* l. 3. c. 3.  
Glanv. l. 14.  
c. 3.  
Foster, 281.  
Stat. Marlbr.  
c. 26.  
Prin. P. L. 230.  
Bract. 134, 135.  
Kely. 121. &c.  
Bract. 121.

1 Hale, c. 447.

*Sect. 2.* But the said law concerning *Engleschire* having been abolished by 14 Edw. 3. c. 4. the killing of any *Englishman* or foreigner through malice prepense, whether committed openly or secretly, was by degrees called murder; and 13 Rich. 2. c. 1. which restrains the king's pardon in certain cases, does in the preamble, under the general name of *murder*, include all such homicide as shall not be pardoned without special words; and, in the body of the act, expresses the same by "murder, or killing"

S. P. C. 18, 19.  
1 Hale, 448.

crime of aggravated homicide, yet it anciently had another and very different meaning. *MURDRUM* anciently signified the fine imposed upon the township where any one was secretly assassinated and the slayer not forthcoming to answer the demand of justice. This fine is said to have originated in the policy of the Danish monarch Canute, who, after his victories over the Saxons in this country, seated himself upon the throne. But his countrymen, like all conquerors, were hated by the people whom they had subdued and oppressed. They were, therefore, frequently killed in private by the natives. And in order for their security, he imposed a fine of 66 marks of silver upon every township where a Dane was found killed, and the slayer not forthcoming. And further, to throw a greater security around them, and to make townships more vigilant to apprehend the offender, the slain man was always to be considered a Dane whether he was known or not, unless it was found by a presentment that he was an Englishman and not a Dane—which presentment was called "*Englescherie*," and being found, relieved the township of the fine. After the Norman conquest, William adopted the same law for the protection of his Norman followers. And it appears that this fine of *murdrum* was only imposed in cases of secret killing, for it is thus described by Bracton, who wrote at the close of the reign of Hen. 3.: "*Nunc autem dicendum de homicidio quod nullo presente, nullo sciente, nullo audiente, nullo vidente clam perpetratur quod dicitur murdrum, unde in primis videndum quod sit quæ causæ inventionis et qualiter quis ex murdro excusetur. Murdrum vero est occulta extraneorum et nolorum hominum occisio a manu hominis nequiter perpetratum et quæ nullo sciente, vel vidente facta est præter solum interfectorem, et suos condutores et fautores, et ita quod non statim asequatur clamor popularis.*" "*Extraneorum dico quia sive interfectus cognitus fuerit sive ignotus dicitur Francigena (a Norman), nisi Englescheria; i. e. quod Anglicus sit probetur per parentes et eorum justiciarios presentetur.*" He then goes on to detail the differ-

ent evidence required of the party slain being an Englishman, which it appeared differed in different places—some requiring two male and two female relatives of the deceased to prove the fact; and he concludes by observing, "*quoniam in diversis commitatibus diversimode presentatur inquirendum erit in quolibet itinere ab initio quæ sit consuetudo presentandi Englescheriam.*" (Lib. 3. c. 16.) "And this further appears by many hundred old charters of the kings of England, especially to bishops and monasteries, whereby it was granted that they and their possessions should be quiet '*de murdro et latrocinio*,' whereby we must not think that they had power granted them to commit murder or theft, but they were thereby acquitted of those common amerciements, in ancient times imposed in eyre upon vills for murder and theft committed there." (H. H. P. C. c. 35.) This law continued in force until the 14 Ed. 3., at which time the distinction between Norman and Saxon became lost, both being blended in one people; and by a statute of that year it was enacted, "That Engleschery, and the presentment thereof, shall be taken away for ever."

It may now be proper to say something as to the legal import of the words "*malice forethought*," which is now an essential ingredient in the crime of murder. Malice is a word of legal import both in the civil law and our own, and denotes a wicked, perverse, and incorrigible disposition, and not as the word would, in its limited signification, seem to imply, a principle of malevolence to particular persons. Sir M. Foster has cited many passages from our ancient laws in which the term malice has clearly that general signification, and therefore the implied malice of the law, if carefully adverted to, he says, will be found to turn upon this single point, "that the fact hath been attended with such circumstances, as carry in them plain indications of a heart regardless of social duty, and fatally bent on mischief." (Introduction to Discourse on Homicide.)

“ing by await, assault, or malice prepensed.” And doubtless the makers of 23 Hen. 8. c. 1. which excluded all wilful murder of malice prepense from the benefit of the clergy, intended to include open, as well as private, homicide within the word murder.

Stamf. l. 1. c.  
10.  
1 Hale, 430.  
3 Inst. 47.

*Sect. 3.* By MURDER, therefore, at this day, we understand the wilful killing of any subject whatsoever, through malice forethought, whether the person slain shall be an *Englishman* or foreigner.

And for the better understanding hereof, I shall examine the following particulars:—FIRST, In what cases a man may be said to kill another. SECONDLY, In what places such killing is within the cognizance of the law. THIRDLY, Who are such persons by killing of whom a man may commit murder. FOURTHLY, What killing shall be adjudged to be malice prepense, or murder.

As to THE FIRST POINT, *viz.* In what cases a man may be said to kill another.

3 Inst. 48. 91.  
Palm. 548.  
1 Inst. 295.  
4 Comm. 196.  
1 Hale, 425.  
432.  
2 Hawk. c. 29.  
31. 9 Str. Tr. 146 to 251.

*Sect. 4.* Not only he who by a wound or blow, or by poisoning, strangling, or famishing, &c. directly causes another's death, but also in many cases he who by wilfully and deliberately doing a thing which apparently endangers another's life, thereby occasions his death, shall be adjudged to kill him.

Crom. 24. 90.  
Pult. 122.  
Dalt. c. 93.  
1 Hale, 431, 432.

*Sect. 5.* And such was the case of him who carried his sick father against his will, in a cold frosty season, from one town to another, by reason whereof he died.

Crom. 24.  
Dalt. c. 93.  
1 Hale, 432.

*Sect. 6.* Such also was the case of the harlot, who being delivered of a child, left it in an orchard covered only with leaves, in which condition it was struck by a kite, and died thereof.

(*a*) S. P. C. 36.  
3 Inst. 91.  
Vide 14 Ed. 3.  
c. 10.  
(*b*) Dalt. c. 93.  
Sup. c. 1. s. 7.  
1 Hale, 431.  
436, 442, 467.  
(*c*) Plowd. 474.

*Sect. 7.* And in some cases a man shall be said, in the judgment of the law, to kill one who is in truth actually killed by another, or by himself; as where one by duress (*a*) or imprisonment compels a man to accuse an innocent person, who on his evidence is condemned and executed; or where one incites a (*b*) madman to kill himself or another; or where one lays (*c*) poison with an intent to kill one man, which is afterwards accidentally taken by another, who dies thereof.

9 Co. 81.  
1 Hale, 430,  
431, 617.  
F. Cor. 311.  
S. P. C. 17.  
Crom. 24.  
Dalt. c. 93.  
Pult. 122.  
Exodus, c. xxi.  
v. 29.  
Id. Raym. 145.  
Prin. P. L. 236.

*Sect. 8.* Also he who wilfully neglects to prevent a mischief, which he may and ought to provide against, is, as some have said, in judgment of the law, the actual cause of the damage which ensues; and therefore if a man have an ox or a horse, which he knows to be mischievous, by being used to gore or strike at those who come near them, and do not tie them up, but leave them to their liberty, and they afterwards kill a man, according to some opinions, the owner may be indicted as having himself feloniously killed him; and this is agreeable to the *Mosaical law*. However, as it is agreed by all, such a person is certainly guilty of a very gross misdemeanor.

*Sect.*

*Sect. 9.* Also it is agreed, that no person shall be adjudged by any act whatever to kill another who doth not die thereof within a year and a day after; in the computation whereof, the whole day on which the hurt was done shall be reckoned the first.

Pult. 123.  
Dalt. c. 93.  
S. P. C. 21.

*Sect. 10.* But if a person hurt by another die thereof within a year and a day, it is no excuse for the other that he might have recovered, if he had not neglected to take care of himself. (2)

3 Inst. 53.  
Kely. 26.  
1 Keb. 17.  
1 Hale, 428.  
Prin. P. L. 234.

As to THE SECOND POINT, *viz.* In what places such killing is within the consuance of the law.

*Sect. 11.* It seems, that the killing of one who is both wounded and dies out of the realm, or wounded out of the realm and dies here, cannot be determined at common law, because it cannot be tried by a jury of the neighbourhood where the fact was done. But it is agreed, that the death of one who is both wounded and dies beyond sea; and it is said by some, that the death of him who dies here of a wound given him there, may be heard and determined before the constable and marshal, according to the civil law, if the king please to appoint a constable. And it seemeth also to be clear, that such a fact being examined by the privy council, may by force of 33 Hen. 8. c. 23. be tried, in relation to the principal offenders, but not as to the accessaries, before commissioners appointed by the king in any county in *England*.

3 Inst. 48.  
1 Hale, 426.  
3 Inst. 51.  
Co. Lit. 75.  
S. P. C. 65.  
B. App. 153.  
C. Car. 247.  
Bk. 2. c. 23.  
s. 12.  
3 Keb. 785.  
Cont. 3 Keb.  
715.  
1 And. 195.

*Sect. 12.* A murder at sea was anciently cognizable only by the civil law, but now by force of 27 Hen. 8. c. 4. and 28 Hen. 8. c. 15. it may be tried and determined before the king's commissioners (3) in any county of *England* according to the course of the common law. Yet the killing of one who dies at land of a wound received at sea, is neither determinable at common law, nor by force of either of these statutes: but it seems that it may be tried by the constable and marshal, or before commissioners

3 Inst. 48, 49.

1 Leon. 270.  
3 Inst. 48.  
Vide 4 Black.  
Com. 459.

appointed,

(2) A gaoler, knowing a prisoner to be infected with an epidemic distemper, confines another prisoner against his will in the same room with him, by which he catches the infection, of which the gaoler had notice, and the prisoner dies; this is a felonious killing. *Stra.* 856. 9 St. Tr. 146. So, to confine a prisoner in a low, damp, unwholesome room, not allowing him the common conveniences which the decencies of nature require, by which the habits of his constitution are so affected as to produce a distemper of which he dies; this also is felonious homicide. *Stra.* 884. *Ld. Raym.* 1578. For although the law invests gaolers with all necessary powers for the interest of the commonwealth, they are not to behave with the least degree of wanton cruelty to their prisoners. *O. B.* 1784. p. 1177. And these were deliberate acts of cruelty, and enormous violations of the trust the law reposes in its ministers of justice. *Foster*, 322.

So also, any one who assuming to take care of another, refuses the necessary subsistence, or by any other severity, though not of a nature to produce immediate death, as by putting the party in such a situation as may possibly be dangerous to life or health, if death actually and clearly ensues

in consequence of it, it is murder.—And this mode of killing is of the most aggravated kind, because a long time must unavoidably intervene before the death can happen, and also many opportunities of deliberation and reflection. *O. B.* 1784. p. 455. and *Rex v. S. Self.* *O. B.* Feb. Sess. 1776.

So also, by the old common law, to bear false witness, and with express premeditation, by this means to take away the life of another, was held to be murder. *Mirr.* c. 1. s. 19. *Brit. c.* 5. *Bract.* l. 3. c. 4. But it is said that this enormous crime can hardly be so considered at this day. 3 Inst. 48. The authority, however, for this opinion, in *Foster*, 131, is said by no means absolutely to warrant the conclusion. 4 Comm. 196.

(3) Namely, the admiral or his deputy, and three or four more, (among whom two common-law judges are constantly appointed, who in effect try all the prisoners,) the indictment being first found by a grand jury of twelve men, and afterwards tried by another jury. This is now the only method of trying marine felonies in the court of admiralty; the judge of the admiralty still presiding therein, just as the lord mayor presides at the sessions in London. 4 Comm. 266.



appointed, in pursuance of the aforesaid statute of 33 Hen. 8. c. 23.

† And for preventing any failure of justice, and for taking away all doubts touching the trial of murders in the following cases—It is enacted by the 2 Geo. 2. c. 21. “That where any person shall be feloniously stricken or poisoned upon the sea, or at any place out of *England*, and shall die of the same stroke or poisoning within *England*;—or where any person shall be feloniously stricken or poisoned at any place within *England*, and shall die of the same stroke or poisoning upon the sea, or at any place out of *England*; an indictment thereof found by the jurors of the county of *England* in which such death, stroke, or poisoning shall happen respectively as aforesaid, whether before the coroner upon the view of such dead body, or before the justices of the peace, or other justices or commissioners who shall have authority to enquire of murders, shall be as good and effectual in law as well against the principals and accessaries, as if such felonious stroke and death, or poisoning and death, and the offence of such accessaries, had happened in the same county where such indictment shall be found; and the justices of gaol delivery and oyer and terminer in the same county, and also any superior court, in case such indictment shall be removed, &c. shall and may proceed upon the same in all points, as they might or ought to do in case such stroke, poisoning, or death, &c. had happened in the same county where such indictment shall be found.”

3 Inst. 48, 49.  
1 Hale, 426.  
B. Cor. 140,  
141. 143.  
Indict. 13. 45.  
S. P. C. 90.  
6 Il. 7. 10.  
Finch, 411.  
S. P. C. 182.  
Ass. 9.  
B. App. 3. 80.  
83. 85. 149.

*Sect. 13.* It is said by some, that the death of one who died in one county of the wound given in another, was not indictable at all at common law, because the offence was not complete in either county, and the jury could enquire only of what happened in their own county. But it hath been holden by others, that if the corpse were carried into the county where the stroke was given, the whole might be enquired of by a jury of the same county; and it is agreed, that an appeal might be brought in either county, and the fact tried by a jury returned jointly from each: and at this day, by force of 2 and 3 Edw. 6. c. 24. the whole is triable by a jury of the county where the death shall happen, on an indictment found, or appeal brought, in the same county.

B. 2. c. 25. s.  
39, 40.  
C. Car. 247.  
498. 533.

1 Jon. 255. 1 Lev. 118. Latch. 12. 118. 3 Inst. 50. 8 Mod. 136. 146. Stra. 502. 553. 6 Mod. 147. Vaugh. 413. Sid. 179. Keb. 621. 663. 677. Wils. 320. Atk. 175. 182. Vent. 93.

*Sect. 14.* Also by force of 26 Hen. 8. c. 6. a murder in *Wales* may be enquired of in an adjoining *English county*. But appeals must still be brought in the proper county.

As to THE THIRD POINT, *viz.* Who are such persons by killing of whom a man may commit murder.

*Sect. 15.* It is agreed, that the malicious killing of any person, whatsoever nation or religion he be of, or of whatsoever crime attainted, is murder.

*Sect. 16.* And it was anciently holden, that the causing of an abortion, by giving a potion to, or striking a woman big with child, was murder. But at this day it is said to be a great misprison

Bract. 121.  
S. P. C. 21.  
B. Cor. 91.  
F. Cor. 146.  
183. 263.

prison only, and not murder, unless the child be born alive and die thereof, in which case it seems clearly to be murder, notwithstanding some opinions to the contrary (a). And in this respect also, the common law seems to be agreeable to the *Mosaic*, which as to this purpose is thus expressed: "If men strive and hurt a woman with child, so that her fruit depart from her, and yet no mischief follow, he shall be surely punished, according as the woman's husband will lay upon him, and he shall pay as the judges determine; and if any mischief follow, then thou shalt give life for life."

(a) Vide 1 Hale, 433. 23 Ass. 94. B. 2. c. 29. s. 18. 3 Inst. 50. 3 Ass. 2. B. Cor. 68. Dalt. c. 93. Exodus, c. xxi. v. 22, 23.

*Sect. 17.* It seems also agreed, that where one counsels a woman to kill her child when it shall be born, who afterwards does kill it in pursuance of such advice, he is an accessory to the murder. † But in the case of the murder of bastard children by the unnatural mother, it is difficult to prove that the child was born alive; and it was therefore enacted by 21 Jac. 1. c. 27. made perpetual by 16 Car. 1. c. 4. "That if any woman be delivered of any issue of her body, male or female, which being born alive, should by the laws of this realm be a bastard, and she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herself, or the procuring of others, so to conceal the death thereof, as that it may not come to light whether it were born alive or not, but be concealed, except such mother can prove by one witness that such child was born dead, she shall suffer death as in case of murder."

Dyer. 186. 1 Hale, 433. 429. 3 Inst. 51. Kely. 127.

This statute is repealed by stat. 43 Geo. 3. c. 58. s. 3. by which it is enacted, "That from the first day of July, 1803, the trials in England and Ireland, respectively, of women charged with the murder of any issue of their bodies, male or female, which being born alive, would by law be bastard, shall proceed and be governed by such and the like rules of evidence and of presumption, as are by law used and allowed to take place in respect to other trials for murder, and as if the said act had never been made."

4 Comm. 198. Barring. 425. Prin. P. L. 16. O. B. 1784. p. 1223.

Section 4th provides, "It shall be lawful for the jury by whose verdict any person charged with such murder as aforesaid shall be acquitted, to find, in case it shall so appear in evidence, that the prisoner was delivered of issue of her body, male or female, which, if born alive, would have been bastard, and that she did, by such burying or otherwise, endeavour to conceal the birth thereof, and thereupon it shall be lawful for the court before which such prisoner shall be tried, to adjudge that such prisoner shall be committed to the common gaol or house of correction for any time not exceeding two years." (4)

As to THE FOURTH POINT, viz. What killing shall be adjudged of malice prepense or murder.

*Sect. 18.* It is to be observed, that any formed design of doing mischief may be called malice; and therefore that not such killing only as proceeds from premeditated hatred or revenge against the person killed, but also in many other cases, such as is accom-

For. 256, 257. Kely. 130. 1 Hale, 451 to 454.

panied

(4) This statute does not make the concealment a substantive indictable offence, but merely authorizes the jury to find the fact upon an indictment

for murder, so that it is still necessary to indict for the murder to warrant the jury to find the fact of concealment.

panied with those circumstances that shew the heart to be perversely wicked, is adjudged to be of malice prepense, and consequently murder.

*Sect. 19.* And according to this notion, I shall consider, **FIRST**, Such murder as is occasioned through an express purpose to do some personal injury to him who is slain in particular, which seems to be most properly called express malice.—**SECONDLY**, Such as happens in the execution of an unlawful action, principally intended for some other purpose, and not to do a personal injury to him in particular who is slain, in which case the malice seems to be most properly said to be implied.

*Sect. 20.* As to MURDER in the first sense, such acts as shew a direct and deliberate intent to kill another, as poisoning, stabbing, and such like, are so clearly murder, that I know not any questions relating thereto worth explaining.

But the cases which have borne dispute have generally happened in the following instances:—**FIRST**, In duelling.—**SECONDLY**, In killing another without any provocation, or but upon a slight one.—**THIRDLY**, In killing one whom the person killing intended to hurt in a less degree.

*Sect. 21.* As to THE FIRST INSTANCE of this kind, it seems agreed, that wherever two persons in cool blood meet and fight on a precedent quarrel, and one of them is killed, the other is guilty of murder, and cannot help himself by alleging that he was (a) first struck by the deceased; or that he had often (b) declined to meet him, and was prevailed upon to do it by his importunity; or that it was his intent only to vindicate his reputation; or that he meant not to kill but only to disarm his adversary; for since he deliberately engaged in an act highly unlawful, in defiance of the laws, he must at his peril abide the consequences thereof.

*Sect. 22.* And from hence it clearly follows, that if two persons quarrel over-night, and appoint to fight the next day, or quarrel in the morning, and agree to fight in the afternoon, or such a considerable time after, by which, in common intention, it must be presumed that the blood was cooled, and then they meet and fight, and one kill the other, he is guilty of murder.

*Sect. 23.* And wherever it appears from the whole circumstances of the case, that he who kills another on a sudden quarrel, was master of his temper at the time, he is guilty of murder; as if after the quarrel he fall into other discourse, and talk calmly thereon; or perhaps if he have so much consideration as to say, that the place wherein the quarrel happens is not convenient for fighting; or that if he should fight at present, he should have the disadvantage by reason of the height of his shoes, &c.

*Sect. 24.* And if *A.* on a quarrel with *B.* tell him that he will not strike him, but that he will give *B.* a pot of ale to strike him, and thereupon *B.* strike and *A.* kill him, he is guilty of murder, for he shall not elude the justice of the law by such pretence to cover his malice.

*Sect.*

*Sect. 25.* In like manner, if *B.* challenge *A.* and *A.* refuse to meet him, but in order to evade the law tell *B.* that he shall go the next day to such a town about his business, and accordingly *B.* meet him the next day in the road to the same town, and assault him, whereupon they fight, and *A.* kills *B.* he seems guilty of murder, unless it appear by the whole circumstances that he gave *B.* such information accidentally, and not with a design to give him an opportunity of fighting.

1 Hale, 453.  
Con. Crom. 22.  
and Sum. 48.

*Sect. 26.* And at this day it seems to be settled, that if a man assault another with malice prepense, and after he driven by him to the wall, and kill him there in his own defence, he is guilty of murder in respect of his first intent.

Crom. 22.  
Dalt. 93.  
Sum. 47.  
Kely. 58. 129.

*Sect. 27.* And it hath been adjudged, that even upon a sudden quarrel, if a man be so far provoked by any bare words or gestures of another, as to make a push at him with a sword, or strike at him with any other such weapon as manifestly endangers his life, before the other's sword is drawn, and thereupon a fight ensue, and he who made such assault kill the other, he is guilty of murder; because that by assaulting the other in such an outrageous manner, without giving him an opportunity to defend himself, he shewed that he intended not to fight with him but to kill him, which violent revenge is no more excused by such a slight provocation, than if there had been none at all.

Crom. 23.  
Dalt. c. 93.  
Kely. 61. 131.  
Ld. Ray. 1139.  
2 St. Tr. 62.

*Sect. 28.* But it is said, that if he who draws upon another in a sudden quarrel make no pass at him till his sword is drawn, and then fight with him and kill him, he is guilty of manslaughter only, because that by neglecting the opportunity of killing the other before he was on his guard, and in a condition to defend himself, with a like hazard to both, he shewed that his intent was not so much to kill as to combat with the other, in compliance with those common notions of honour, which prevailing over reason during the time that a man is under the transports of a sudden passion, so far mitigate his offence in fighting, that it shall not be adjudged to be of malice prepense.

Kely. 55. 61.  
131.  
Ld. Ray. 1493.  
10 St. Tr. 518.  
Foster, 297.  
2 Roll. 461.

*Sect. 29.* And if two happen to fall out upon a sudden, and presently agree to fight, and each of them fetch a weapon, and go into the field, and there one kill the other, he is guilty of manslaughter only, because he did it in the heat of blood.

3 Inst. 51.  
1 Hale, 453.  
3 Bulst. 17.

*Sect. 30.* And such an indulgence is shewn to the frailties of human nature, that where two persons who have formerly fought on malice, are afterwards to all appearance reconciled, and fight again on a fresh quarrel, it shall not be presumed that they were moved by the old grudge, unless it appear by the whole circumstances of the fact.

1 Hale, 452.  
Crom. 23.  
Dalt. c. 93.  
1 Roll. 360.  
3 Bulst. 171.

*Sect. 31.* But the law so far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds are guilty of murder, whether they fought or not; and some have gone so far as to hold, that the seconds of the person killed are also equally guilty, in respect to that countenance which they give to their principals in the execution of their purpose, by accompanying them therein, and being ready to bear

Dalt. c. 93.  
1 Freem. 514.  
O. B. 1784. p.  
1043.  
1 Hale, 413.  
11 St. Tr. 114.  
Prin. P. L. c.  
19.

bear a part with them : but some have thought this rather too severe a construction to make a man by such reasoning the murderer of his friend, to whom he was so far from intending any mischief, that he was ready to hazard his own life in his quarrel.

Foster, 255.  
Ld. Ray. 1493.  
Kely. 27.  
Strange, 773.

*Sect. 32.* As to THE SECOND INSTANCE of this kind, *viz.* such murder as happens in killing another without any provocation, or but upon a slight one ; it is to be observed, that wherever it appears that a man killed another, it shall be intended, *prima facie*, that he did it maliciously, unless he can make out the contrary, by shewing that he did it on a sudden provocation, &c.

Cro. Eliz. 694.  
Ld. Ray. 144.  
2 Inst. 537.  
(a) Kely. 135.  
1 Hale, 455,  
456. 473.  
2 Roll. 460,  
461.  
(b) Kely. 131,  
&c.  
Dalt. c. 93.  
(c) C. Eliz. 779.  
Noy. 171.  
1 Sid. 277.  
1 Lev. 180.

*Sect. 33.* Also it seems to be agreed, that no (a) breach of a man's word or promise, no trespass either to (b) lands or goods, no affront by bare (c) words or gestures, however false or malicious it may be, and aggravated with the most provoking circumstances, will excuse him from being guilty of murder, who is so far transported thereby, as immediately to attack the person who offends him in such a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such assault, whether the person slain did at all fight in his defence or not ; for so base and cruel a revenge cannot have too severe a construction.

Hob. 121. Con. 1. Jon. 432. Kely. 55. 61. 131. C. Jac. 296. 12 Co. 87. O. B. 1784. p. 19.  
Foster, 326. 5 St. Tr. 296. 7 St. Tr. 422. Styles, 467. See the case of Bartholomew Quarle, argued on a special verdict in the king's bench in Hilary, 1791.

Vide Fos. 295.  
1 Hale, 456.

*Sect. 34.* But if a person so provoked had beaten the other only in such a manner, that it might plainly appear that he meant not to kill, but only chastise him ; or if he had restrained himself till the other had put himself on his guard, and then in fighting with him had killed him, he had been guilty of manslaughter only.

*Sect. 35.* And of the like offence shall he be adjudged guilty, who seeing two persons fighting together on a private quarrel, whether sudden or malicious, takes part with one of them, and kills the other.

(a) Kely. 137.  
1 Vent. 158.  
Raym. 212.  
2 Keb. 829.  
(b) Kely. 135.  
3 Mod. 68.  
(c) Sum. 57.  
3 Inst. 55.  
(d) Kely. 137.  
1 Hale, 457.  
(e) Crom. 27.  
1 Hale, 445.  
(f) Kely. 51.  
Prin. P. L. 225.

*Sect. 36.* Neither can he be thought guilty of a greater crime, who (a) finding a man in bed with his wife, or being actually (b) struck by him, or pulled by the nose, or tillipped upon the forehead, immediately kills him ; or (c) who happens to kill another in a contention for the wall ; or (d) in the defence of his person from an unlawful arrest ; or (e) in the defence of his house from those who claiming a title to it attempt forcibly to enter it, and to that purpose shoot at it, &c. or in (f) the defence of his possession of a room in a public-house from those who attempt to turn him out of it, and thereupon draw their swords upon him ; in which case the killing the assailant hath been holden by some to be justifiable : but it is certain that it can amount to no more than manslaughter.

Rowley's Case,  
C. Jac. 296.  
1 Hale, 453.  
Godb. 182.

*Sect. 37.* Nor was he judged criminal in a higher degree, who seeing his son's nose bloody, and being told by him, that he had been beaten by such a boy, ran three quarters of a mile, and having

having found the boy, beat him with a small cudgel, whereof he afterwards died.

Ld. Raym.  
1493.  
and Foster, 294,  
295.

† *Sect. 38.* Nor was he thought more criminal, who, duped and encouraged by a concourse of people, threw a pickpocket into a pond adjoining the road, in order to avenge the theft by ducking him, but without any apparent intention to take away his life, and the pickpocket was drowned; for although this mode of punishment is highly unjustifiable and illegal, yet the law respects the infirmities and imbecilities of human nature where certain provocations are given.

Old Bailey  
Session, 1785.

† *Sect. 39.* So also where three Scotch soldiers were drinking together in a public-house, and one of them struck some strangers, who were drinking in another box, with a small rattan, for having used several opprobrious epithets, and reviled the character of the Scotch nation, and an altercation ensued; and one of the strangers laid hold of the soldier who had stricken, and threw him against a settle; and, when the soldier had paid the reckoning, the stranger again shoved him from the room into the passage, upon which the soldier exclaimed, that "he did not mind killing an Englishman more than eating a mess of crowdy;" upon which the stranger, assisted by another person, violently pushed the soldier out of the house, whereupon the soldier instantly turned round, drew his sword, and stabbed the stranger to the heart; this was adjudged manslaughter.

Rex v. Taylor,  
5 Burr. 2793.

† *Sect. 40.* But in these, and indeed in every other case of homicide upon provocation, how great soever it be, if there is a sufficient time for passion to subside, and for reason to interpose, such homicide will be murder.

Fost. 278. 296.  
1 Hale, 486.  
1 Ven. 158.  
Ray. 212.  
Mary Hazel's  
case in B. R.

a special verdict from Norfolk, Trinity Term, 1784. But see the cases of the King v. Snow, tried before Mr. Justice Willes, Sum. Ass. Northampton, 1786, Cases in C. L. 138; Rex v. John Brown for the murder of J. Maccaster, June, 1776, Cases in C. L. 135; and the case of Bartholomew Quarle for the murder of his wife at Hadgrave, in the Isle of Ely, argued on a special verdict in the King's Bench in Hilary Term, 1791.

As to THE THIRD INSTANCE of this kind, viz. Such murder as happens in killing one whom the person killing intended to hurt in a less degree.

*Sect. 41.* It is to be observed, that wherever a person, in cool blood, by way of revenge, unlawfully and deliberately beats another in such a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone so far.

Kely. 61. 131.  
Jones, 198.  
Palm. 585.  
Str. 771.  
Ld. Raym.  
1489. 1493.

*Sect. 42.* Also it seems, that he who, upon a sudden provocation, executes his revenge in such a cruel manner, as shews a cruel and deliberate intent to do mischief, is guilty of murder, if death ensue; as where the keeper of a park, finding a boy stealing wood, tied him to a horse's tail and beat him, whereupon the horse ran away and killed him.

Holloway's  
Case, C. Car.  
131.  
W. Jon. 198.  
Palm. 545.  
Kely. 127.  
1 Hale, 454.  
Foster, 292.

*Sect. 43.* And now I am to consider THE SECOND GENERAL BRANCH of this head, viz. In what cases such killing shall be adjudged murder which happens in the execution of an unlawful action, principally intended for some other purpose, and not to

Prin. P. L. 226.

do a personal injury to him in particular who happens to be slain.

And this I shall consider in the following instances :

1. Where the principal intention is to commit another felony.
2. Where the principal design is to commit a bare breach of the peace not intended against the person of him who happens to be slain.
3. Where the chief motive is to assist a third person.
4. Where the direct design is to escape from an arrest.
5. Where the principal purpose is to usurp an illegal authority.
6. Where no mischief is intended at all.

As to THE FIRST PARTICULAR, viz. Such killing as happens in the execution of an unlawful action, whereof the principal intention was to commit another felony.

1 Hale, 465.  
474.  
Kely. 117.  
Prim. P. L. 225.  
Dalt. c. 93.  
Moor, 87.  
Plow. 101.

*Sect. 44.* It seems agreed, that wherever a man happens to kill another in the execution of a deliberate purpose to commit any felony, he is guilty of murder; as where a person shooting at tame fowl, with an intent to steal them, accidentally kills a man; or where one sets upon a man to rob him, and kills him in making resistance; or where a person shooting at, or fighting with one man, with a design to murder him, misses him and kills another.

3 Inst. 51.  
1 Hale, 436.  
441. 467.

(a) The case of  
John Sanders,  
Plowd. 474.

(b) Agnes  
Gore's Case,  
9 Co. 81.

*Sect. 45.* And not only in such cases where the very act of a person having such a felonious intent, is the immediate cause of a third person's death, but also where it any way occasionally causes such a misfortune, it makes him guilty of murder; and such was the case of the husband who gave a poisoned apple to his wife, who eat not enough of it to kill her, but innocently, and against the husband's will and persuasion, gave part of it to a child, who died thereof: (a) such also was the case of the wife who mixed ratsbane in a potion sent by an apothecary to her husband, which did not kill him, but afterwards killed the apothecary, who to vindicate his reputation tasted it himself, having first stirred it about. (b) Neither is it material in this case, that the stirring of the potion might make the operation of the poison more forcible than otherwise it would have been; for inasmuch as such a murderous intention, which of itself perhaps in strictness might justly be made punishable with death, proved now in the event the cause of the king's losing a subject, it shall be as severely punished as if it had had the intended effect, the missing whereof is not owing to any want of malice, but of power.

Plow. 474.  
9 Co. 81.  
1 Hale, 431.

*Sect. 46.* But if one happen to be poisoned by ratsbane laid in order to destroy vermin, the person by whom he is so killed is guilty of homicide *per infortunium* only, because his intentions were wholly innocent.

1 Hale, 441.  
446. 457.  
Dalt. c. 93.

*Sect. 47.* Also if a third person accidentally happen to be killed by one engaged in a combat with another upon a sudden quarrel,

quarrel, it seems that he who kills him is guilty of manslaughter only. F. Cor. 180.  
Savil, 67.  
Kely. 66.

*Sect. 48.* But it hath been adjudged, that if a justice of peace, constable, or watchman, or even a private person, be killed in endeavouring to part those whom he sees fighting, the person by whom he is killed is guilty of murder; and that he cannot excuse himself by alleging that what he did was in a sudden affray in the heat of blood, and through the violence of passion; for he who carries his resentment so high as not only to execute his revenge against those who have affronted him, but even against such as have no otherwise offended him but by doing their duty, and endeavouring to restrain him from breaking through his, shews such an obstinate contempt of the laws, that he is no more to be favoured than if he had acted in cool blood. 22 Ass. 71.  
4 Co. 40.  
9 Co. 68.  
Crom. 25.  
Fost. 308, 309.

*Sect. 49.* Yet it hath been resolved, that if the third person slain in such a sudden affray do not give notice for what purpose he comes, by commanding the parties in the king's name to keep the peace, or otherwise manifestly shewing his intention to be not to take part in the quarrel, but to appease it, he who kills him is guilty of manslaughter only, for he might suspect that he came to side with his adversary. Kely. 66. 115.  
Fos. 310, 311.  
Staunf. 13.  
1 Hale, 442.  
460, 461.  
Ld. Ray. 1296.

† *Sect. 50.* But if the person interposing in such case be an officer within his proper district, and known, or but generally acknowledged to bear the office he assumeth, the law will presume that the party killing had due notice of his intent, especially if it be in the day-time. Fost. 135. 311.

As to THE SECOND INSTANCE of this kind, viz. Such killing as happens in the execution of an unlawful action, where the principal design is to commit a bare breach of the peace, not intended against the person of him who happens to be slain.

*Sect. 51.* It seems clear, that regularly, where divers persons resolve generally to resist all opposers in the commission of any breach of the peace, and to execute it in such a manner as naturally tends to raise tumults and affrays, as by committing a violent disseisin with great numbers of people, hunting in a park, &c. and in so doing happen to kill a man, they are all guilty of murder; for they must at their peril abide the event of their actions who wilfully engage in such bold disturbances of the public peace, in open opposition to, and defiance of, the justice of the nation. S. P. C. 17.  
1 Hale, 442,  
443. 463, 534.  
Sav. 67.  
Moor, 86.  
Palm. 35.  
Crom. 24, 25.  
5 Mod. 280.  
Dyer, 128.

† *Sect. 52.* But in such case the fact must appear to have been committed strictly in prosecution of the purpose for which the party was assembled; and therefore if divers persons be engaged in an unlawful act, and one of them with malice prepense against one of his companions, finding an opportunity, kills him, the rest are not concerned in the guilt of that act, because it hath no connection with the crime in contemplation. (a) So where two men were beating another man in the street, and a stranger made some observation upon the cruelty of the act, upon which one of the two men gave him a mortal stab with a knife; both the men were indicted as principals in the murder, yet, although both Foster, 354.  
9 St. Tr. 715.  
  
(a) Prin. P. L.  
237.  
Kely. 112.



both were doing an unlawful act in beating the man, as the death of the stranger did not ensue upon that act, and it appearing that only one of them intended any injury to the person killed, the judges were of opinion that the other could not be guilty either as principal or accessary, and he was acquitted. (b)

(b) See *Rex v. Hodgson*,  
Cases C. L. 6.

*Rex v. Thompson*, Kely. 66. 8 Mod. 164. 12 Mod. 236. 629.

Crom. 28.  
1 Hale, 440.  
Foster, 312.

*Sect. 53.* Yet where divers rioters having forcible possession of a house, afterwards killed a person whom they had ejected, as he was endeavouring in the night forcibly to regain the possession, and to fire the house, they were adjudged guilty of manslaughter only, notwithstanding they did the fact in maintenance of a deliberate injury; perhaps for this reason, because the person slain was so much in fault himself.

Dalt. c. 93.  
3 Inst. 52.  
Kely. 66.  
22 Ass. 71.  
4 Co. 40.  
9 Co. 68.  
Crom. 25.

*Sect. 54.* But if in such or any other quarrel, whether it were sudden or premeditated, a justice of peace, constable, or watchman, or even a private person, be slain in endeavouring to keep the peace and suppress the affray, he who kills him is guilty of murder; for notwithstanding it was not his primary intention to commit a felony, yet inasmuch as he persists in a less offence with so much obstinacy, as to go on in it to the hazard of the lives of those who no otherwise offend him but by doing their duty in maintenance of the law, which therefore affords them its more immediate protection, he seems to be in this respect equally criminal, as if his intention had been to commit a felony.

As to THE THIRD INSTANCE of this kind, *viz.* Such killing as happens in the execution of an unlawful action, the principal motive whereof was to assist a third person.

1 Hale, 437.  
Plov. 100.  
Crom. 23.  
Dalt. c. 93.  
Savil, 67.  
Palm. 30.

*Sect. 55.* It seems clear, that if a master, maliciously intending to kill another, take his servants with him, without acquainting them with his purpose, and meet his adversary and fight with him, and the servants seeing their master engaged take part with him, and kill the other, they are guilty of manslaughter only, but the master of murder.

Crom. 26.  
Dalt. c. 94.  
1 Roll, 407.  
3 Bulst. 206.  
Cowp. 832.

*Sect. 56.* And therefore it follows, *à fortiori*, that if a man's servant or friend, or even a stranger, coming suddenly, and seeing him fighting with another, side with him and kill the other, or seeing his sword broken send him another, wherewith he kills the other, he is guilty of manslaughter only.

Kely. 67. 86.  
Fost. 318, 319.  
12 Mod. 361.

*Sect. 57.* Yet in this very case, if the person killed were a bailiff or other officer of justice, resisted by the master, &c. in the due execution of his duty, such friend or servant, &c. are guilty of murder, whether they knew that the person slain were an officer or not.

*Sect. 58.* But perhaps it may be objected, that in this last case there seems to be no more malice than in the former; and such third person being wholly ignorant that the party killed was an officer, seems to be no more in fault than if he had been a private person.

Fost. 271. 309.  
318.

*Sect. 59.* To this it may be answered, that all fighting is highly unlawful, and that he who, on a sudden seeing persons engaged in

in it, is so far from endeavouring to part them, as every good subject ought, that he takes part with one side, and fights in the quarrel without knowing the cause of it, shews a high contempt of the laws, and a readiness to break through them on a small occasion, and must at his peril take heed what he does, and consequently might, perhaps, in strict justice, be adjudged in the foregoing cases to act with malice, which doth not always signify a particular ill-will against the person killed, as appears by many of the above-mentioned cases; and though such person be favoured in respect of the suddenness of the occasion, where both the quarrel and the persons are private, yet he must not expect such indulgence where the fight, in which he so rashly engages, was begun in open opposition to the justice of the nation, and a person happens to be killed thereby who engaged in maintenance thereof, and on that account is under its more particular care; and may justly challenge, that his opposers be made examples, to deter others from joining in such unwarrantable quarrels.

1 Sid. 160.  
Noy, 50.

Plow, 100.

*Sect. 60.* But if a man, seeing another arrested and restrained from his liberty, under colour of a press-warrant or civil process, &c. by those who in truth have no such authority, happen to kill such trespassers in rescuing the person oppressed, he shall be adjudged guilty of manslaughter only, notwithstanding the injured person submitted to them, and endeavoured not to rescue himself, and the person who rescued him did not know that he was illegally arrested; for since in the event it appears that the persons slain were trespassers, covering their violence with a show of justice, he who kills them is indulged by the law, which in these cases judges by the event, which those who engage in such unlawful actions must abide at their peril.

Kely, 60. 137.  
Crom. 27.  
Ld. Ray, 1296.  
Holt, 485.  
But the principles upon which this case was decided, are very elegantly and strongly controverted by Mr. Justice Foster, p. 315 to 318.

As to THE FOURTH INSTANCE of this kind, *viz.* Such killing as happens in the execution of an unlawful action, whereof the direct design was to escape from an arrest.

*Sect. 61.* It seems to be agreed, that whoever kills a sheriff, or any of his officers, in the lawful execution of a civil process, as on arresting a person upon a *capias*, &c. is guilty of murder.

2 Hale, c. 83.  
Dalt. c. 93.  
1 Hale, 463.  
Crom. 24.  
Strange, 490.  
6 St. Tr. 195. Foster, 29. 135. 308.

*Sect. 62.* Neither is it any excuse to such a person that the process was erroneous (for it is not void by being so), or that the arrest was in the night, or that the officer did not tell him for what cause he arrested him, and out of what court (which is not necessary when prevented by the party's resistance); or that the officer did not shew his warrant, which he is not bound to do at all if he be a bailiff commonly known, nor without a demand if he be a special one.

9 Co. 66. 68.  
C. Jac. 280. 486.  
1 Hale, c. 437.  
458. 462.  
Fost. 137. 311.  
312. 318.  
2 Hale, c. 85.  
6 Co. 68, 69.

*Sect. 63.* Yet the killing of an officer in some cases will be manslaughter only; as

*Sect. 64.* FIRST, Where the warrant by which he acts gives him no authority to arrest the party; as where a bailiff arrests "*J. S. a baronet*" who never was knighted, by force of a warrant to arrest "*J. S. knight*."

C. Car. 372.  
537.  
1 Hale, 56.  
457. 460.  
1 Jon. 346.

1 Lev. 91. 12 Co. 49. Jones, 429. 4 Inst. 333.  
*Sect.*

6 Mod. 173.  
 Ld. Raym.  
 1028.  
 2 Roll. 137.  
 Palm. 52.  
 1 Hale, 458.  
 5 Co. 93.

*Sect. 65.* SECONDLY, Where a good warrant is executed in an unlawful manner; as if a bailiff be killed in breaking open a door or window to arrest a man; or perhaps if he arrest one on a *Sunday* since 29 Car. 2. c. 7. by which all such arrests are made unlawful. (1)

2 Hale, 117, 470. Salk. 79. Foster's Crown Law, 311, 319.

As to THE FIFTH INSTANCE of this kind, *viz.* Such killing as happens in the execution of an unlawful action, whereof the principal purpose was to usurp an illegal authority.

Vide sup. c.  
 10. s. 5.

*Sect. 66.* It seems clear, that if persons take upon them to put others to death, either by virtue of a new commission wholly unknown to our laws, or by virtue of any known jurisdiction which clearly extends not to cases of this nature, as if the court of common pleas cause a man to be executed for treason or felony, or the court martial, in time of peace, put a man to death by the martial law, both the judges and officers are guilty of murder.

Douglas, 206.

*Sect. 67.* But where persons act by virtue of a commission, which if it were strictly regular would undoubtedly give them full authority, but happens to be defective only in some point of form, it seems that they are no way criminal.

As to THE SIXTH INSTANCE of this kind, *viz.* Such killing as happens in the execution of an unlawful action, where no mischief was intended at all.

C. 11. s. 12.  
 3 Inst. 57.  
 12 Mod. 628.  
 Ld. Ray. 143.  
 Prin. P. L. 236.

*Sect. 68.* It is said, that if a person happen to occasion the death of another, inadviesly doing any idle wanton action, which cannot but be attended with the manifest danger of some other; as by riding with a horse, known to be used to kick, among a multitude of people, by which he means no more than to divert himself by putting them into a fright, he is guilty of murder.

S. P. C. 16.  
 Pulton, 22.  
 Cron. 27.  
 43 Ed. 3. 33.  
 F. Cor. 163.  
 Britt. c. 5.  
 4 Inst. 251.

*Sect. 69.* Also it hath been anciently holden, that if a person not duly authorised to be a *physician* or *surgeon*, undertake a cure and the patient die under his hand, he is guilty of felony; but inasmuch as the books wherein this opinion is holden were written before the statute of 23 Hen. 8. c. 1. which first excluded such felonious killing as may be called wilful murder of malice prepense, from the benefit of clergy, it may be well questioned whether such killing shall be said to be of malice prepense, within the intent of that statute.

1 Hale, 429,  
 430.

*Sect. 70.* However, it is certainly highly rash and presumptuous for unskilful persons to undertake matters of this nature; and indeed the law cannot be well too severe in this case, in order

(1) Peace officers having a *legal* warrant to arrest for a breach of the peace, may break open doors, after having given due notice and demanded admittance. Foster, 136. but they cannot justify breaking open *entured* doors or windows to execute a civil suit. Fort. 319, 320. Cowp. 3. Therefore, where a man, who had been arrested, by the artful contrivance of an officer, upon civil process (that of the warrant having been filled up after it had been sealed), obliged the officer to de-

camp by snapping a pistol at him three times; but the officer returning to the house, accompanied by the plaintiff and the attorney, and all three attempting to force in, the man within fired a gun through the door and shot the attorney, it was ruled manslaughter only. 10 St. Tr. 462. Foster, 311, 312. See also the case of Mary Adey, Cases in C. L. 2d edit. 188. and the Gordons' case, Cases Cro. Law, 412.

order to deter ignorant people from endeavouring to get a livelihood by such practice, which cannot be followed without the manifest hazard of the lives of those who have to do with them: but surely the charitable endeavours of those gentlemen who study to qualify themselves to give advice of this kind, in order to assist their poor neighbours, can by no means deserve so severe a construction from their happening to fall into some mistakes in their prescriptions, from which the most learned and experienced cannot always be secure.

See Dalt. c. 93.  
4 Com. 197.

For other particulars relating to this head, see the chapter of *Principals and Accessories*, in the second book.

## CHAP. XIV.

### OF PETIT-TREASON.

AT common law not only the offences specified in the twenty-fifth of *Edward the Third*, but many others also were esteemed petit-treasons, which are not so at this day; as (a) piracy by a subject; (b) discovery of the king's counsel by one of the grand jury; (c) an attempt by a wife to kill her husband, &c.

3 Inst. 20, 21.  
(a) 40 Ass. 35.  
(b) 27 Ass. 63.  
3 Inst. 22.  
Dalt. c. 91.  
(c) S. P. C. 10. See 1 Hale, 377 to 382.

*Sect. 1.* But by 25 Edw. 3. st. 5. c. 2. no offence shall be adjudged petit-treason, except in the following instances:

1. Where a servant kills his master.

2. Where a wife kills her husband.

3. Where an ecclesiastical man, secular or religious, kills his prelate to whom he owes obedience.

*Sect. 2.* And this statute hath been so strictly construed, that no other case whatsoever, which cannot be brought within the meaning of these words, however it may be in its own nature more heinous, shall, by parity of reason, be expounded to be within the equity of them; and therefore the murder of a father by a son shall not be punished as petit-treason, unless the son may, by a reasonable construction, come under the word "servant," serving the father for meat, drink, clothes, or wages, in which case he shall be indicted by the name of a servant.

*Sect. 3.* Yet the murder of a mistress, or of a master's wife, has been adjudged petit-treason within this statute; for notwithstanding the person slain can in neither of these cases, in good grammar, come under the word "*master*," yet they are clearly within the meaning thereof, being used here to signify any person to whom another stands related as a servant.

*Sect. 4.* Also the murder of a person by one who was his servant, upon malice conceived during the service, though it be not within the express words, is within the meaning of them, inasmuch as it is but the execution of the treasonable intention of the party while he was a servant.

*Sect. 5.* Also the procuring, aiding, or abetting, of any of these offences,

3 Inst. 20, 21,  
138.

1 Hale, 379.  
Dyer, 332.

offences, is clearly punishable within the meaning of this act, in the same manner as it was before; for the plain intent of the statutes is only to restrain the judges from proceeding against other crimes, as petit-treasons, but no way to alter the law as to these; and therefore it seems agreed, that persons accused of petit-treason shall be construed to be either not guilty at all, or principal or accessory according to the known rules of law in other cases.

1 Hale, 378.  
S80.  
Dalish. 16.  
Dalt. c. 91.  
Crom. 19, 20.

*Sect. 6.* And from hence it follows, that if the fact appear to have been done upon a sudden falling out, or in the party's necessary self-defence, &c. it cannot be petit-treason; for inasmuch as all petit-treason implies murder, and is the highest degree thereof, wherever the circumstances do not make the offence murder, they cannot make it petit-treason; and *vice versa*, generally wherever the circumstances are such as will make the killing of a stranger by a stranger murder, they make the killing of a husband or master, &c. petit-treason.

Dyer, 254.  
B. Cor. 119.

40 Ass. 25.  
3 Inst. 20, 21.  
139.

Crom. 19.  
Dyer, 123, 332.  
Moor, 91.  
Dalish. 16.

*Sect. 7.* Yet it hath been adjudged, that if a wife or servant procure a stranger to kill the husband or master, in the absence of such wife or servant, neither the procurer nor actor are guilty of petit-treason, but of murder only; because it is an allowed maxim, that *the offence of an accessory can never be of a higher kind than that of the principal*; but it seems clear, that if the wife or servant be either actually present when the crime is done, or present only in judgment of law, as being in the same house, but not in the same room, (in which case the hopes of their immediate assistance encourages and emboldens the murderer to commit the fact, which otherwise perhaps he would not have dared to do, and makes them guilty in the same degree, as if they had actually stood by with their swords drawn, ready to second the villainy) such wife, or servant, being principals as much as the stranger, are guilty of petit-treason, and the stranger of murder.

1 Hale, 382.  
Dyer, 332.  
Crom. 41.  
Dalish. 16.

*Sect. 8.* But it is said, that if a wife procure a servant to kill the husband, both are guilty of petit-treason; and even if a stranger procure a wife, or servant, to kill the husband or master, it seems that he may be indicted as accessory to petit-treason.

*Sect. 9.* A wife divorced *causa adulterii vel scilicet* is still within this law, because the bond of matrimony is not thereby dissolved, and she may again lawfully cohabit with her husband. But a divorce *causa consanguinitatis vel præcontractus* entirely dissolves the nuptial tie, and annihilates the very character of wife. Therefore, a wife *de facto* only, and not *de jure*, cannot commit this crime, for she has no lawful lord to whom she owes subjection and obedience. Neither can a husband be guilty of this crime by killing his wife *de jure*, for there is no reciprocity of obedience and subjection.

1 Hale, 378.  
382.  
4 Comm. 204.

† *Sect. 10.* A clergyman living and beneficed in one diocese who kills the bishop or metropolitan of that diocese, or of the diocese where he may be beneficed by dispensation, or the bishop who ordained him, may be guilty of this offence; for a canonical obedience results both from institution and ordination.

† *Sect.*

† *Sect. 11.* Principals in this offence were first debarred the benefit of clergy by 12 Hen. 7. c. 7. and accessaries both before and after, by 4 and 5 Philip and Mary, c. 4. (1)

(1) The law considers *petty-treason* and *murder* as one offence, differing only in circumstance and degree; *Fost.* 327. Cases in *Cro. Law*, 2d Edit. 363. and the principles that govern in the case of murder, are equally applicable to *petty-treason*, 4 *Com.* 204. And *autrefois acquit*, or attain in murder, is a good bar in *petty-treason*, and *e converso*, 2 *Hale*, 246. 232. 3 *Inst.* 213. It is included in a pardon under the name of murder, 1 *Hale*, 378. And the offender may be indicted either for *petty-treason*, murder, or manslaughter, and tried and found guilty on such indictment, of either of those crimes respectively, according as the case may appear upon the evidence, 1 *Hale*, 378. *Foster*, 326. *Henrietta Radbourn's Case*, Cases in *Cro. Law*, 363.

But if the prosecutor be apprized of the real case, he ought to adapt the bill to the truth of the fact, *Fost.* 104. 326. For though the offences are to most purposes considered as substantially the same, yet there is at common law some difference

with regard to the judgment, and a very material one with regard to the trial. *Fost.* 327. The punishment is, in a man, to be drawn and hanged; and in a woman, it was, at common law, to be drawn and burned; 1 *Hale*, 382. 3 *Inst.* 311. But by 30 Geo. 3. c. 48. the punishment of burning is abolished: see book 2. ch. 48. s. 6. And, on the trial, the prisoner is intitled to a peremptory challenge of thirty-five, *Fost.* 327. Two witnesses also are required both on the indictment and at the trial, 1 *Edw.* c. 12. *Fost.* 337. And the 5 and 6 Ed. 6. c. 11. by general words extending to all treasons, requireth that the witnesses, if living, shall be examined in person upon the trial in open court. Depositions therefore taken before the coroner, or informations taken by a justice of peace, are not evidence whereon to ground a conviction of *petty-treason*, if the party be living, though unable to travel, or kept out of the way by the prisoner, or his procurement. *Fost.* 337. See *Radbourn's Case*, Cases in *Cro. Law*, 363.

## CHAP. XV.

### OF MAIMING,

*Common, Felonious, and aggravated Assaults.*

IN treating of the offences of Mayhem, I shall consider,

1. What offences against the members of a man's body are esteemed MAIMS.

2. How they are punished by the common law.

3. How by statute.

As to the first particular, *viz.* What shall be esteemed maims.

*Sect. 1.* It seems, that such a hurt of any part of a man's body whereby he is rendered less able, in fighting, either to defend himself or to annoy his adversary, is properly a maim.  
S. P. C. 3.  
Co. Lit. 126.  
3 *Inst.* 62. 118.  
3 *Bl. Com.* 12.  
and see Mr. Reeves's *Hist. English Law*, 2 vol. page 34, 35.

*Sect. 2.* And therefore, the cutting off or disabling or weakening a man's hand or finger, or striking out his eye or fore-tooth, or castrating him, are said to be maims; but the cutting off his ear or nose, &c. are not esteemed maims, because they do not weaken, but only disfigure him.  
25 *Edw.* 3.  
pl. 94.  
*Fitz. Cor.*  
142. 458.  
4 *Bl. Comm.*  
206.

As to the second particular, *viz.* How such offences are punished by the common law.

*Sect. 3.* It is to be observed, that all *maim* is felony. It is said, that anciently castration was punished with death, and other maims with the loss of member for member. But afterwards, no maim was punished in any case with the loss of life or member, but only with fine and imprisonment.  
Bract. 144.  
*Fleta*, bk. 1.  
c. 40.  
S. P. C. 37.  
3 *Inst.* 62. 118.  
*Stra.* 1100.

*Sect.*

Co. Lit. 127.

**Sect. 4.** By the common law also, if a person maim himself, in order to have a more specious pretence for asking charity, or to prevent his being impressed as a sailor, or enlisted as a soldier, he may be indicted, and, on conviction, fined and imprisoned.

As to the third particular, *viz.* How far maim is punishable by statute.

† **Sect. 5.** By 22 and 23 Car. 2. c. 1. it is enacted, "That if any person shall, on purpose and of malice forethought, and by lying in wait, unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject of his majesty, with intention in so doing to maim or disfigure, in any the manners before-mentioned, such his majesty's subjects, that then and in every such case, the person or persons so offending, their counsellors, aiders, and abettors, knowing of, and privy to the offence as aforesaid, shall be and are by the said statute declared to be felons, and shall suffer death as in cases of felony without benefit of clergy."

**Sect. 7.** But by 22 and 23 Car. 2. c. 1. s. 2. it is provided, "That no attainder of such felony shall extend to corrupt the blood, or forfeit the dower of the wife, or the lands, goods, or chattels of the offender." (1)

Woodburn and  
Coke's Case at  
the Suffolk  
Assizes,  
8 Geo. 1.  
6 St. Tr. 212.  
See 9 Geo. 1.  
c. 22.

† **Sect. 8.** If a man attack another of malice forethought, in order to murder him with a bill, or any other such like instrument, which cannot but endanger the maiming him, and in such attack happen not to kill, but only to maim him, he may be indicted on this statute, together with all those who were his abettors, &c. and it shall be left to the jury on the evidence, whether there was a design to murder by maiming, and consequently a malicious intent to maim as well as to kill, in which case the offence is within the statute, though the primary intention was to murder. (2)

† **Sect.**

(1) This act, which is commonly called the Coventry Act was occasioned by an assault on Sir John Coventry in the street and slitting his nose, by some persons who lay in wait for him, this, it is said, was done, in revenge from some obnoxious words uttered by him in parliament, in which he reflected on the profligate conduct of Chas. II. in respect to his intercourse with actresses. In order to bring an offender within this act, the fact must be done by lying in wait; but the st. of 43 Geo. 3. c. 58. gives a much more extensive remedy, and supercedes in a great measure the necessity of the statute of Chas. 2. and of 9 Geo. 1. On this subject vide next sect. Assault with Intent to murder.

(2) This case has however been since questioned, in the case of Rhyndick Williams, indicted for assaulting Miss Porter, with an intent to cut her garments, against the statute of 6 Geo. 1. It appeared that the prisoner's object was the brutal one of wounding her person, though in doing so he necessarily cut her clothes. Upon the authority of the ruling in the case of Coke and Woodburn, that the party intended all the minor things necessary to accomplish his purpose, though not his ultimate

and principal intent. Buller, J. directed the jury to find him guilty of the charge in the indictment, namely, of an assault with intent to cut and destroy the garments; but the judges held this to be wrong: and Eyre, C. B. questioned the propriety of the decision in the case of the King against Coke and Woodburn. E. P. C. v. 1. p. 424.

Several cases have been decided as above under the Coventry act, as to what should be considered a "lying in wait," but they are now immaterial since the passing the statute of 13 Geo. 3. as the lying in wait is no ingredient in the assaulting under the latter act. But it is necessary to consider what shall be said to be a cutting under this last act. This is a question of fact upon the evidence whether the wounding be a *cutting* or not, and it is immaterial with what instrument it be done, whether with an instrument made for cutting or not, so that in fact the wound be a "*cut*;" this was decided in the case of one Harwood, who was convicted at the Old Bailey, Jan. sess. 1805. He had been detected in attempting to commit a felony, and in order to escape apprehension he struck the prosecutor with an iron crow bar on the head. The surgeon

† *Sect. 9.* It has been decided upon the Coventry Act that a large transverse cut across the nose, so wide and deep as to render the bone visible, is a slitting of the nose within the statute 22 and 23 Car. 2. c. 1. although the nostril is not thereby perforated. Evidence being given by surgeons that what was then called a cut was formerly in old surgical writers called a slit, the term used in the statute.

† *Sect. 10.* But it has been ruled, that where a husband, who had lived a long while separate from his wife, visited her and persuaded her to let him sleep with her, and took an opportunity, during the night and while she was asleep, to make a wound across his wife's throat, about three inches in length, with a razor which he had procured and concealed for the purpose, the offence was not complete; for though it was a sufficient lying in wait, yet it was not such a maim as the act requires, as both are necessary before an offender can be convicted.

† *Sect. 11.* So also it has been said, that to follow an accomplice in picking pockets, with intent to maim any person who shall detect him, is a *lying in wait* within this statute; for a person who intends to maim another, and by deliberately watching an opportunity, carries that intention into execution, may be said to lie in wait on purpose.

† *Sect. 12.* But it seems, that the lying in wait must be for the purpose of committing the maim; for where a person was stealing the turnips of another from his field, and, on the owner going up to him, struck him immediately on the nose, with a sharp instrument fixed into a stick of wood, which slit his nose, it was determined, that although this was a slitting of the nose, yet neither the malice nor the lying in wait were sufficiently clear, to bring the offence within the statute.

### *Of Assaults and Batteries.*

As to ASSAULTS AND BATTERIES, I shall consider the following particulars:

1. What shall be said to be an assault.
2. What shall be said to be a battery.
3. In what cases assault and battery may be justified.
4. In what manner they are to be punished.

As to THE FIRST POINT, *viz.* What shall be said to be an assault.

#### *Sect.*

surgeon in his evidence stated that a part of the bone of the skull was cut out like a piece of quill. The chief baron, who tried the prisoner, thought, as the implement was rather calculated for bruising than cutting, it was doubtful whether it came within the meaning of the act; but the judges held the conviction right.

So in a case tried before Mr. J. Chambre at York Lent Ass. 1806, the incisions were made with

a claw of a hammer, but the surgeon stated they were *incisions*. The judges held the conviction right.

But in a case of John Adams, who was tried at the Old Bailey, Jan. sess. 1808—a blow on the head given with an iron bar, and which had given a contused and not an incised wound, the judges held the case not within the act.

Barney Carroll's Case, Cases C. L. 53.

Lee's Case, O. B. July Sess. 1763. *coram* PARKER, Chief Baron.

Tickner's Case, Cases C. L. 170.

Case of John Mills, O. B. April Sess. 1783, *coram* EYRE, Chief Baron. Cases C. L. 172, *notis.*

Tickner's Case, O. B. Feb. Sess. 1778, on a case reserved for the opinion of the twelve judges.



Pulton, 4.  
6 Mod. 173,  
174.  
2 R. Abr. 545.  
1 Vent. 256.  
1 Mod. 3.  
1 Keb. 921.  
41 Ed. 3. 40.  
42 Ed. 3. 7.  
45 Ed. 3. 24, 25.  
22 Ass. 60.  
2 R. Abr. 515.  
10 Mod. 187.  
2 Keb. 515.  
Law of Evid.  
235.

**Sect. 1.** It seems that an assault is an attempt, or offer, with force and violence, to do a corporal hurt to another; as by striking at him with or without a weapon; or presenting a gun at him at such a distance to which the gun will carry; or pointing a pitch-fork at him, standing within the reach of it; or by holding up one's fist at him; or by any other such-like act done in an angry threatening manner; and from hence it clearly follows, that one charged with assault and battery, may be found guilty of the former, and yet acquitted of the latter. But every battery includes an assault; therefore on an indictment of assault and battery, in which the assault is ill laid, if the defendant be found guilty of the battery, it is sufficient. Notwithstanding the many ancient opinions to the contrary, it seems agreed at this day, that no words whatsoever can amount to an assault.

As to the SECOND POINT, *viz.* What shall be said to be a *battery*.

22 Ass. 11.  
Pult. 3.  
Lamb. 126.  
Salk. 384.  
6 Mod. 149.  
172.  
1 Mod. 3.  
3 Lev. 404.  
Skin. 387.  
2 R. Abr. 546.

**Sect. 2.** It seems that any injury whatsoever, be it never so small, being actually done to the person of a man in an angry, revengeful, rude, or insolent manner, as by spitting in his face, or any way touching him in anger, or violently jostling him out of the way, are batteries in the eye of the law. But it is said to be no battery to lay one's hand gently on another whom an officer has a warrant to arrest, and to tell the officer that this is the man he wants.

As to THE THIRD POINT, *viz.* In what cases an assault and battery may be justified.

6 Mod. 172.  
230. 263.  
4 Comm. 145.  
216.  
11 Mod. 43. 52.  
2 Salk. 642.  
L. Ray. 177.  
1 Sid. 246.  
Holt, 699.

**Sect. 3.** This is so fully set forth in the chapter of *Surety of the Peace*, that there seems to be no need of any consideration thereof in this place; and therefore I shall only add, that where a man in his own defence beats another who first assaults him, &c. he may take an advantage thereof upon an *indictment*, as well as upon an *action*; but with this difference, that in the first case he may give it in evidence upon the plea of *not guilty*, and in the latter he must plead it specially.

As to THE FOURTH POINT, *viz.* How unlawful assaults and batteries are punished.

8 Mod. 283.  
1 Bac. Abr. 56.

**Sect. 4.** There is no doubt but that the wrongdoer is subject both to an action at the suit of the party, wherein he shall render damages, &c. and also to an indictment at the suit of the king, wherein he shall be fined according to the heinousness of the offence.

It had been ruled that a man could not be indicted in one indictment for assaulting two persons, but that there ought to have been a separate indictment for the assault upon each, (*R. v. Clenden, Lord Raymond, 1572, 2 Str. 870*); but this doctrine was overruled in the case of *R. v. Benfield and Saunders, 2 Burr. 984*, and Buller J. said, "the point is, where it is one act, "and then the offence is the same."

*Assault with intent to Murder, or do grievous Bodily Harm.*

The various intentions and motives with which assaults may be made upon the persons of others, or the circumstances by which they may be aggravated, may be distributed—1. With intent to murder or do bodily harm. 2. With intent to rob. 3. With intent to destroy garments. 4. Assaulting master woolcomber for not complying with illegal bye-laws. 5. Assaults on account of money won at gaming. 6. Assaulting persons wrecked. 7. Mariner assaulting his commander to hinder him fighting his ship. 8. Beating clerk in orders. 9. False imprisonment; 10. Kidnapping and leaving seamen abroad.

The ancient common law of England provided with such anxiety for the personal safety of the subject, that every act done against another, which might in its consequences prove fatal to his existence, was construed to be felonious. Of this there are several instances in the Year-Books of *Edward the Second* and *Edward the Third*. (a) In the reign of *Edward the Fourth* the maxim that *voluntas reputabitur pro facto* began to grow obsolete; (b) and this offence was considered as a high misdemeanor only, punishable at discretion. (c) But the daring outrages of certain persons, soon after the accession of the present royal family, confederated in *disguised* habits, under the appellations of *the Blacks*, made it necessary that the old law of *England* should, in some instances, be revived.

(a) 8 State Trials, 292.

(b) 3 Reeves's H. 413. Year-Book, 9 Edw. 4. pl. 28.

(c) P. Serj. Cheshire, 8 St. Tr. 292.

† Sect. 2. And accordingly it is enacted by 9 Geo. 1. c. 22. sect. 1. "That if any person or persons shall wilfully and maliciously shoot at any person in any dwelling house or other place; or shall forcibly rescue any person in lawful custody for the said offence; or shall, by gift or promise of money, or other reward, procure any other to join with him or them in such unlawful act, such offenders shall be adjudged guilty of felony, and suffer death without the benefit of clergy."

† Sect. 3. By sect. 14. "Every offence done or committed contrary to this act, shall and may be enquired of, examined, tried, and determined in any county within that part of *Great Britain* called *England*, in such manner and form as if the fact had been therein committed."

Upon this act the following constructions have been made :

† Sect. 4. FIRST, That this clause of the act is entire and independent, and has no relation whatever to that part of the act relating to the offenders being armed and disguised.

By all the judges in *Arnold's* case, 10 Geo. 1. 8 St. Tr. 313.

† Sect. 5. SECONDLY, That a private prosecutor has an option to prefer his indictment for the above offence in any county of *England* which shall appear to be most favourable to the ends of justice.

*Richard Morris's* case, 2 Bl. Rep. 733. 4 Term Rep. 490.

† Sect. 6. THIRDLY, It is said, that if the shooting be in a dwelling house, it is not necessary to state the name of the person whose house it is; but it is clear, that if the prosecutor do state the name, it must be stated truly; and therefore if there be a variance in the christian name only, it is fatal.

*Rex v. Count Duroc*, Cases Cro. Law, 282.

† Sect.

Gastineau's case,  
Cases Cro. Law,  
323.

† *Sect. 7. FOURTHLY*, It is also clearly agreed, that to make an offender guilty of maliciously shooting within the penalties of this act, it must appear in evidence to be a shooting under such circumstances, that if death had ensued, the homicide would, in construction of law, have amounted to the crime of murder; for otherwise the absurdity might follow, that the offender might be convicted of a capital crime, although the party is living, and of a single felony, *viz.* manslaughter, though the party were killed.

Rex v. Dunn,  
O. B. Oct. Ses.  
1768.

Rex v. Davis,  
Cases Crown  
Law, 391.

† *Sect. 8. FIFTHLY*, It seems also to be certain that as this is a new crime, and the statute has made it consist in being convicted not only *wilfully* but *maliciously*, it is necessary in the indictment to charge that the offender "*wilfully and maliciously shot, &c.*"

Rex v. Elliott,  
O. B. July Ses-  
sions, 1787.

† *Sect. 9. SIXTHLY*, It is also said, that before a person can be convicted upon this statute, the jury must be satisfied that the instrument was loaded with gunpowder, and with a bullet, slug, or other deadly substance; but that it is not necessary to give evidence of these facts specifically, for that if they appear from the general circumstances of the case it is sufficient.

Empson's case,  
O. B. April  
Sessions, 1781.  
See also Gan-  
sell's case, 1773.  
The Coal-heav-  
ers' case, Cases  
Crown Law, 61.

† *Sect. 10. SEVENTHLY*, It seems also to be necessary to prove that the gun, or other instrument, was pointed not merely toward but directly *at* the prosecutor.

† *Sect. 11. EIGHTHLY*, It is determined, that this statute extends not only to the person or persons who actually shoot at another, but also to every person who is present aiding and assisting to commit the offence; for as the statute creates a new felony, it of course possesses all the qualities incidental to a felony at common law.

The case of Gib-  
son, Mutton, and  
Wigg, Cases  
Cro. Law, 288.  
See also Rex v.  
Young, 3 Term  
Rep. 103.

† *Sect. 12.* It seems therefore that an indictment charging several persons jointly as principals in the first degree is good, and that if it appear that some one person then present did maliciously shoot at another, evidence that some or all the persons indicted were only guilty as principals in the second degree, is sufficient to convict one, or some, or all of the defendants on such joint charge.

By stat. 43 Geo. 3. c. 58. it is enacted "That if any person  
"or persons, from and after the 1st day of July, 1803, shall, either in  
"England or Ireland, wilfully, maliciously, and unlawfully shoot at  
"any of his Majesty's subjects; or shall wilfully, maliciously, and  
"unlawfully present, point, or level any loaded fire-arms at any  
"of his Majesty's subjects, and attempt, by drawing a trigger or  
"in any other manner to discharge the same at or against his or  
"their person or persons; or shall wilfully, maliciously and un-  
"lawfully *stab or cut* any of his Majesty's subjects with intent, in  
"so doing or by means thereof, to murder or rob, or to maim,  
"disfigure or disable such his Majesty's subject or subjects; or  
"with intent to do some other grievous bodily harm, to such his  
"Majesty's subject or subjects; or with intent to obstruct, resist,  
"or prevent the lawful apprehension and detainer of the person  
"or persons so stabbing or cutting, or the lawful apprehension  
"and detainer of any of his, her or their accomplices for any of-  
"fence

“ fences for which he, she, or they, may respectively be liable by law to be apprehended, imprisoned or detained; or shall wilfully, maliciously, and unlawfully administer to, or cause to be administered to, or taken, by any of his Majesty’s subjects, any deadly poison, or other noxious and destructive substance or thing, with intent such his Majesty’s subject or subjects, thereby to murder, or thereby to cause and procure the miscarriage of any woman, then being quick with child, that then and in every such case the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to such offence, shall be, and are hereby declared to be felons, and shall suffer death as in cases of felony, without benefit of clergy; provided always, that in case it shall appear on the trial of any person or persons indicted for the wilfully, maliciously and unlawfully shooting at any of his Majesty’s subjects, or for wilfully, maliciously and unlawfully presenting, pointing or levelling any kind of loaded fire-arms at any of his Majesty’s subjects, and attempting by drawing a trigger, or in any other manner to discharge the same, at or against his or their person or persons, or for the wilfully, maliciously and unlawfully stabbing or cutting any of his Majesty’s subjects, with such intent as aforesaid, that such act of stabbing or cutting (3) were committed under such circumstances, as that, if death had ensued therefrom, the same would not in law have amounted to the crime of murder; then and in every such case the person or persons so indicted shall be deemed and taken to be not guilty of the felonies whereof they shall be so indicted, and be thereof acquitted.”

#### *Assault with intent to Rob.*

The old maxim of the criminal law, that *voluntas reputabitur pro facto* (a) continued to prevail in the reign of *Henry the Fourth*; and it was then agreed, that if a man was indicted that *il gisoit deprædando*, it was felony (b): but in the ninth year of *Edward the Fourth* (c), a different doctrine began to be held; and men were no longer punished for crimes which they only meditated, but had not actually committed (d); and since that time the bare intention to commit a felony has been considered as a misdemeanor only, and punishable by fine, imprisonment, &c. (e).

But by stat. 43 Geo. 3. c. 58. it is enacted, “ If any person shall shoot at, or present, point, or level any loaded fire-arms, and attempt to discharge the same at or against any person, or stab, or cut any person with intent to rob, the same is declared felony, without benefit of clergy.”

And by stat. 4 Geo. 4. c. 54. s. . it is enacted, “ If any person shall maliciously assault any other person with intent to rob such other person, or shall by menaces, or by force, maliciously demand money, security for money, goods, or chattels, wares, or merchandize, of any other person, with intent to rob such other person; or shall maliciously threaten to accuse any  
“ other

(a) 25 Edw. 3. pl. 32. 27 Assize, 38. 1 Hale, 532.  
(b) Year-book, 13 Hen. 4. 85.  
(c) Year-book, pl. 26. b. S. P. C. 27. b. (d) Reeves’ History of English Law, 3d vol. p. 413.  
(e) Plowden, 259. Cases temp. Hardw. 3 Inst. 68.

(3) There appears to be an omission here of the words, “ shooting at, &c.” as in the former part of the act.— See note 2, (title Maiming,) for decisions under this act.

“ other person of any crime punishable by law, with death, transportation, pillory, or of any infamous crime, with a view or intent to extort, gain money, security for money, goods, or chattels, wares or merchandize from the person so threatened; or shall procure, counsel, aid or abet the commission of the said offences, or of any of them, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for such term not less than seven years, as the court shall adjudge, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding seven years.”

Before the passing of this statute it was a felony by stat. 7 Geo. 2. c. 22. to assault another *with any offensive weapon* with intent to rob. But the latter statute has not only extended the law by making it a felony to assault generally with such intent, but has also extended the law by embracing the cases of those who made it a practice to extort money by working upon the fears of others in threatening to accuse them of disgraceful offences, and to the aiders and abettors of such offences. It is conceived, upon the authority of *R. v. Remnant*, 5 T. R. 169. that it would be necessary, in an indictment on this statute, to charge the offender with a felonious intent to *rob*, and not merely to “ steal, take, and carry away,” as that description would not reach the definition of robbery, but merely of simple larceny.

As to what shall constitute a demand, it has been ruled on the former statute, 7 Geo. 2. the words of which were the same—

The case of Peter Perfait, O. B. Dec. Sess. 1740, present C. Jus. Willes, who accorded to Chapple's opinion, and the prisoner was thereupon acquitted.

Cases Cro. Law, 19. Vide Haward's Case, O. B. 1783. No. 538.

† *Sect. 3. FIRST*, That to complete the crime, not only the *assault*, as by holding a pistol towards a coachman on his box and telling him to stop, but a *demand* of the money or other property must also actually be made. But in this case it was said by *Mr. Justice Chapple*, who tried the prisoner, that the demand need not be made in *express* terms, for that a dumb man may make a demand, as if he stop a person on the highway, and put his hat into the coach with a pistol in his hand.

Thomas's Case, O. B. July Sess. 1731. Cases Cro. Law, 271.

† *Sect. 4. SECONDLY*, That both the assault and the demand must be made upon the person intended to be robbed; for the words of the act are, “ That if any person shall assault, &c. and demand the money, &c. of any other person, with intent to rob, or commit robbery upon, *such person*.”

#### *Assault with intent to destroy Garments.*

Assaulting any person in the streets, &c. to tear their clothes, &c. felony.

By 6 Geo. 1. c. 23. s. 11. it is enacted, “ That if any person or persons shall, at any time or times, wilfully and maliciously assault any person or persons in the public streets or highways, with an intent to tear, spoil, cut, burn, or deface, and shall tear, spoil, cut, burn, or deface the garments or clothes of such person or persons, that then all and every person and persons so offending, being thereof lawfully convicted, shall be, and be adjudged to be, guilty of felony; and every such felon and felons shall be subject and liable to the like pains and penalties as in

“ case

“ case of felony ; and the courts by and before whom he, she, or  
 “ they shall be tried, shall have full power and authority of trans-  
 “ porting such felons for the space of seven years, upon the like  
 “ terms and conditions as are given, directed, or enacted by the  
 “ stat. of 4 Geo. 1. c. 11.”

† Sect. 2. It is said, that as this statute inflicts the punishment only when the offence is committed “ *in the public streets or high-ways,*” without adding, “ *or elsewhere,*” an assault and defacing of a garment in the play-house or other place, not a street or highway, is not within the act.

Sir John's Fielding's Treatise on the Penal Laws relating to the Metropolis, page 317.

† Sect. 3. It seems also to be clear, that the assault must be made with a wilful and malicious intention “ to tear, spoil, cut, “ burn, or deface” the garments or clothes of the person assaulted ; and therefore, if the wilful and malicious intention be rather to injure *the person* than to deface *the garments*, although in carrying such intention into execution, the garments are cut with such an instrument, and in such a way, as plainly to shew that the intention to injure the person could not be accomplished without cutting or defacing the garment, yet this is not an offence within the statute ; for the destruction of the garments must be the *primary* intention of the offender, and not the *consequence* of his intention to injure the person.

The case of Rhenwick Williams, Cases Cro. Law, 430.

† Sect. 4. It is also decided, that the assault on the person and the tearing, spoiling, cutting, burning, or defacing the garment, must be at one and the same time, and must be so charged in the indictment ; and therefore if an indictment state, “ that *A. B.* “ on the 18th of *January* made an assault on *C. D.* &c. with intent to tear, &c. the garments of the said *C. D.* and that the “ said *A. B.* on the said 18th of *January* did tear, &c. the garments of the said *C. D.*” without saying, “ that he *then and there*, &c. did tear the garments of the said *C. D.* &c.” the indictment is bad ; for, for any thing that appears to the contrary in the indictment, the assault might have been made on one part of the day, and the tearing of the clothes on another part of the day. (4)

Case of R. Williams, Cases C. L. 340.

*Assaulting Master Woolcomber, for not complying with illegal Bye Laws.*

By statute 12 Geo. 1. c. 34. s. 6. it is enacted, “ If any person or persons shall, after 24th of June, 1726, assault or abuse “ any master woolcomber, or master weaver, or other person “ concerned in any of the woollen manufactures of this kingdom, “ whereby any such master or other person shall receive any bodily “ hurt, for not complying with, or not conforming or not submitting to any such (viz. illegal bye-laws made by journeymen in their “ clubs or assemblies, sect. 1.) illegal by-law, ordinances, rules, or orders aforesaid ; or if any person or persons shall write or cause to “ be

(4) This case was ultimately decided upon the latter objection to the indictment ; but the majority of the judges thought that the conviction was wrong on the first ground, namely that the *primary* intention must be to destroy the garments : this is directly at variance with the principle upon which

the case of Coke and Woodburn was decided, (see ante, note 2, under Mayhem,) where it was held that a man must be taken to intend all the subordinate means to effect his primary intent. F. P. C. vol. 1. p. 424. 400.

“ be written, or knowingly send or cause to be sent, any letter or  
 “ other writing or message threatening any hurt or harm to any  
 “ such master woolcomber, or master weaver, or other person  
 “ concerned in the woollen manufacture; or threatening to burn,  
 “ pull down, or destroy any of their houses or outhouses, or to  
 “ cut down or destroy any of their trees, or to maim or kill any  
 “ of their cattle, for not complying with any demands, claims, or  
 “ pretences of any of his or their workmen, or others employed  
 “ by them in the said manufacture; or for not conforming or not  
 “ submitting to any such illegal by-laws, ordinances, rules, or  
 “ orders as aforesaid, every person so knowingly and wilfully of-  
 “ fending in the premises, being thereof lawfully convicted upon  
 “ any indictment to be found within twelve calendar months next  
 “ after any such offence committed, shall be adjudged guilty of  
 “ felony, and shall be transported for seven years to some or one  
 “ of his Majesty’s colonies or plantations in America by such  
 “ ways, means, and methods, and in such manner, and under such  
 “ pains and penalties, as felons in other cases are by law to be  
 “ transported.”

By stat. 8. the provisions of the act are extended to combers of Jersey and wool; to frame-work knitters, weavers of stockings, and to all persons whatsoever concerned or employed in any of the said manufactures.

By the stat. 22 Geo. 2. c. 27. s. 12. the provisions of the above statute are extended to journeymen dyers, journeymen hot-pressers, and all other persons employed in the woollen manufactures of the kingdom, and also to journeymen, servants, workmen and labourers employed in the making of felts or hats, and in the manufacture of silk, mohair, fur, hemp, flax, linen, cotton, fustian, iron, or leather, and in manufacture of those materials mixed one with another.

#### *Assault on Account of Money won at Gaming.*

By stat. 9 Ann. c. 15. s. 8. for preventing quarrels on account of gaming, “ In case any person or persons whatsoever shall as-  
 “ sault, and beat, or challenge or provoke to fight any other per-  
 “ son or persons whatsoever, upon account of any money won by  
 “ gaming, playing or betting at any of the games aforesaid (i. e.  
 “ by s. l. at cards, dice, tables, tennis, bowls, or other game or  
 “ games whatsoever); such person or persons assaulting, &c. or  
 “ challenging, &c. upon the account aforesaid, shall, being thereof  
 “ convicted upon an indictment or information, forfeit all his  
 “ goods, chattels and personal estate whatsoever, and be impris-  
 “ soned in the common gaol of the county where such conviction  
 “ shall be had, for two years.”

On an indictment against Randal and others upon this statute, for assaulting the prosecutor on account of money won at gaming, the latter proved that he had been gaming with the defendants, and having lost his money to them, they had proposed breaking up and going away, but that he objected to it and wanted them to play on, saying that they had won his money, and would give him no opportunity of recovering it back; upon which they had committed the assault; Buller J. was of opinion that the game being  
 over

over before the assault began, the assault could not be said to have arisen out of the game, but from what the prosecutor had said to the defendants. And that it was necessary, in order to bring a case within the statute, that the assault should arise out of the play and during the time of playing; but that here the play was over, and the dispute had arisen from the prosecutor's own words: and therefore he directed the jury to acquit them of the charge. 1 East, 423.

### *Assaulting Persons Wrecked.*

As to assaults on persons wrecked; by stat. 26 Geo. 2. c. 19. it is enacted, "If any person or persons shall beat, or wound, " with intent to kill or destroy, or shall otherwise wilfully obstruct " the escape of any person endeavouring to save his or her life, " from such (viz. any ship, or vessel, of his Majesty's subjects, or " others, which shall be in distress, or which shall be wrecked, " lost, stranded, or cast on shore, in any of his Majesty's domi- " nions) ship or vessel, or the wreck thereof; such person or " persons so offending shall be deemed guilty of felony, and " being lawfully convicted thereof, shall suffer death without " benefit of clergy." By s. 11. of the same act, "If any sheriff, " or his deputy, justice of the peace, mayor, or other magistrate, " coroner, lord of the manor, commissioner of the land-tax, chief " or petty constable, or other peace officer, or any custom-house " or excise officer, or other person lawfully authorized, shall be " assaulted, beaten, and wounded, for, or on account of the " exercise of his or their duty, in or concerning the salvage or " preservation of any ship or vessel in distress, or of any ship or " vessel, goods or effects, stranded, wrecked, or cast on shore, " or lying under water in any of his Majesty's dominions; then " any person or persons so assaulting, beating, and wounding, " shall, upon trial and conviction, by indictment at the assizes or " general gaol delivery, or at the quarter-sessions for the county, " riding, or division, where such offence shall be committed, " be transported for seven years to some of his Majesty's colo- " nies in America; and shall be subject to such subsequent " punishment, in case of return before that time, as other persons " under sentence of transportation are by the law subjected unto."

### *Mariner assaulting his Commander to hinder him fighting his Ship.*

By the statute 22 and 23 Car. 2. c. 11. s. 9. for the suppression of piracy, it is enacted, that "if any mariner shall lay violent " hands on his commander, whereby to hinder him from fighting " in defence of his ship and goods committed to his trust; he " shall suffer death as a felon." The stat. 11 and 12 W. 3. c. 7. s. 9. more fully enacts that "any person" guilty of that offence "shall be adjudged to be a pirate, felon, and robber, and being " convicted thereof, according to the directions of that act, shall " suffer death, and loss of lands, goods, and chattels, as pirates," &c.

### *Beating a Clerk in Orders.*

There is one species of battery which is aggravated from the circumstance of the character and respect due to the person assaulted.



assaulted, which is, the beating of a clerk in orders. By st. 9. Ed. 2. c. 3. it is enacted, "if any lay violent hands on a clerk, the " amends for the peacc broken shall be before the king, and for " the excommunication before a prelate, that penance corporal " may be enjoined; which, if the offender will redeem of his own " good will, by giving money to the prelate or party aggrieved, it " shall be required before the prelate, and the king's prohibition " shall not lie;" so that it appears that three remedies will lie for this offence.—1st. An indictment at the suit of the king for the peace broken. 2. A civil action for damages at the suit of the party. 3. A suit in the ecclesiastical court *pro salute animæ*, and then for the sum that the party may agree to give to get rid of the penance—it being usual in those courts to commute their penance for a round sum of money—"perhaps," says Mr. J. Blackstone, "because poverty is generally esteemed by " moralists as the best medicine *pro salute animæ*." (For Assaulting in a Churchyard, see title *Affray*.)

*Assaulting Members of Parliament.*

By 5 Hen. 4. c. 6. it is recited thus, "Item, because that " Richard Chedder, esquire, which was come to this parliament " with Thomas Broke, knight, one of the knights chosen to the " same parliament for the county of Somerset, and menial servant with the said Thomas, was horribly beaten, wounded, " blemished, and maimed by one John Salage, otherwise called " John Savage, it is ordained and established, that seeing the " same horrible deed was done within the time of the said parliament, that proclamation be made where the same horrible " deed was done, that the said John appear and yield him in the " King's Bench, within a quarter of a year after the proclamation made; and if he do not, the same John shall be attainted " of the said deed, and pay to the party grieved his double " damages, to be taxed by the discretion of the judges of the " said bench for the time being, or by inquest, if need be; and " also, he shall make fine and ransom at the king's will. More- " over, it is accorded in the same parliament, that likewise it be " done in time to come in like case."

By 11 Hen. 6. it is recited and enacted that "the king, willing " to provide for the ease and tranquillity of them that come " to the parliament and councils of the king, by his commandment hath ordained and established, that if any assault or affray " be made to any lords spiritual or temporal, knight of the shire, " citizen or burgess, come to the parliament or to other council " of the king, by his commandment, and there being and attending at the parliament or council, that then proclamation shall " be made in the most open place of the town by three several " days, where the assault or affray shall be made, that the party " that made such affray or assault yield himself before the " king in his bench, within a quarter of a year after the proclamation made, if it be in the time of the term, or otherwise at " the next day in the time of the term following the said quarter; " and if he do not, that he be attainted of the said deed, and pay " to the party grieved his double damages, to be taxed by the " discretion of the justices of the same bench for the time being, " or

“ or by inquest, if it be needful, and make fine and ransom at the king’s will ; and if he come and be found guilty by inquest, by examination, or otherwise, of such affray or assault, that he shall pay to the party so grieved, his double damages, found by the inquest, or to be taxed by the discretion of the said justices, and make fine and ransom at the king’s will.” This statute appears virtually to confirm the stat. 5 H. 4. c. 6. (5)

*Of false Imprisonment, kidnapping, and leaving Seamen abroad.*

False imprisonment is necessarily attended with assault and battery, and is therefore an indictable offence, and is laid as an aggravation of the battery. It is a misdemeanor and punishable as other misdemeanors. But an aggravated species of false imprisonment is the privately carrying off any person, and keeping them secretly confined, which is generally understood by the term *kidnapping*. The offence at common law was punished by fine, imprisonment, and pillory. We may infer from the statute of 43 Eliz. c. 13. that at that day it was a common practice in the four northern counties for marauders and freebooters to carry off the inhabitants forcibly from their dwellings, and keep them in secret custody, until they had redeemed themselves by paying ransom to their captors.—But the progress of civilization, and an increased population in those counties, has put an end to this practice, and it is only now remembered as a proof of the barbarous manners of the period, (vide postea, the statute under chapter Offences against the Public Peace). The law ever considered it a great aggravation of false imprisonment, that the injured party should be sent out of his country, and beyond the protection of its laws (which seems to be the proper meaning of the term kidnapping). Nay, so jealous were our ancestors in this respect, that they would not suffer those who were detained by legal authority to be sent to a prison out of the kingdom, for by the Habeas Corpus Act, 31 Car. 2. c. 2. sec. 12. it is enacted, “ No subject of this realm, that shall be an inhabitant of England, Wales, or Berwick, shall be sent prisoner into Scotland, Ireland, Jersey, Guernsey, or places beyond the seas ; and every such imprisonment is hereby adjudged illegal : and any subject so imprisoned may maintain an action of false imprisonment in any of his Majesty’s courts of record against the persons by whom he shall be so committed, detained, imprisoned or transported, and against any person that shall contrive, write, seal, or countersign any warrant or writing for such commitment. &c. or shall be advising or assisting in the same ; and shall recover treble costs, besides damages, which shall not be less than £500, in which action no delay, &c., shall be allowed, except such rule of court made in open court, as in justice shall be necessary for special cause expressed in the rule. And the person who shall knowingly write, seal, or countersign any warrant for such commitment, detainer, or transportation, or shall so commit, &c. any person contrary to this act, or be advising or assisting  
“ therein,

(5) For Assaults in the King’s Palaces, vide chapter 3, Offences against the King. For assaulting Privy Counsellors, vide same. For Assaults in a Church or Churchyard, vide post,

Offences against the Peace, tit., “ Affray.” For assaulting persons to prevent the free passage of grain, vide post, Malicious Mischief.

“ therein, being lawfully convicted, shall be disabled to bear any office of trust or profit, and shall incur the penalties of the statute of præmunire, 16 Ric. 2. cap. 5. and be incapable of any pardon from the king, of the said forfeitures, &c.”

*Leaving Seamen abroad.*

A similar offence to carrying persons abroad against their will is the one of leaving them abroad. To prevent this, in the case of seamen, it is enacted by 11 and 12 W. 3. c. 7. s. 8. that “ In case any master of a merchant ship or vessel shall, after the 29th of September, 1700, during his being abroad, force any man on shore, or wilfully leave him behind in any of his majesty’s plantations or elsewhere, or shall refuse to bring home with him again all such of the men which he carried out with him as are in a condition to return when he shall be ready to proceed in his homeward-bound voyage, every such master shall, being thereof legally convicted, suffer three months imprisonment without bail or mainprize.”

The statute 58 Geo. 3. c. 38. recites the above provision of the statute of William, and that “ No mode of prosecuting is provided by the said act in case of offences committed against the same,” and then, “ for remedy thereof,” enacts, “ That from and after the passing of this act, all offences committed against the said act, shall and may be prosecuted by indictment or information at the suit of his majesty’s attorney-general, in his majesty’s court of King’s Bench at Westminster; and that in such indictment or information the offence or offences shall and may be alleged to have been committed at Westminster, in the county of Middlesex; and that the said court shall be and the same is hereby authorized to issue a commission or commissions for the examination of witnesses abroad, and that the depositions taken under such commission or commissions shall be received in evidence on the trial of such indictments and informations respectively.”

The second section recites the twenty-seventh section of the statute 31 G. 2. c. 10. which provides, “ That every master, &c. of any merchant vessel in foreign parts and homeward-bound from thence, should take on board so many seafaring men or boys, subjects of Great Britain, as should by shipwreck, capture, or other unavoidable accident, be driven or cast away to, or that should be discharged as unserviceable from any of the vessels of the royal navy at foreign places, where governors, ministers, and consuls, appointed by his majesty, his heirs or successors, should reside, or where none such are resident, where any two or more British merchants should reside, as the said governors, &c. or merchants should direct, not exceeding four for each 100 tons of which his ship should consist; but that no penalty or mode of prosecution is imposed or provided by the said act in case of neglect or refusal to obey the directions therein contained;” and then enacts, “ that any master or person having the charge of any merchant vessel belonging to any of his majesty’s subjects, that shall be or arrive in any such foreign parts, and be bound from thence

“ to any port in the United Kingdom of Great Britain and Ireland, and who shall be required, in writing, under the hand or hands of any such governor, minister, consul, or merchants, to take on board any such seafaring man or boy, men or boys, being a subject or subjects of the said United Kingdom, not exceeding the number mentioned in the said act, for the purpose of carrying and conveying him or them to the said port in the said United Kingdom, and who shall neglect and refuse to take on board, or to carry and convey him or them accordingly, shall for every such offence forfeit and pay the sum of £100 for each and every such man or boy whom he shall so refuse or neglect to take on board and to carry and convey as aforesaid, to be recovered by information at the suit of his majesty’s attorney-general in his majesty’s court of King’s Bench or Exchequer at Westminster; and that in such information the offence or offences shall and may be alleged to have been committed at Westminster in the county of Middlesex; and that the court in which such information shall be brought, shall be and the same is hereby authorized to issue a commission or commissions for the examination of witnesses abroad, and that the depositions taken under such commission or commissions shall be received in evidence on trial of such information.” s. 2.

The third section contains regulations to be observed by masters, &c. of vessels leaving seafaring men or boys in foreign parts on account of sickness, in respect of the payment of their wages, and imposes a penalty of £20 on such masters, &c. not complying with such regulations, to be recovered as above, and authorizes the issuing a like commission to examine witnesses abroad.

## CHAP. XVI.

### OF OFFENCES MORE PARTICULARLY AGAINST THE PERSONS OF WOMEN.

OFFENCES against the persons of women are Rape—Forcible Marriage—Seduction—Stealing away Infant Children—and Compulsory Marriage of Paupers.

#### *Rape.* (1)

In treating of RAPE I shall consider,

1. What shall be called RAPE.
2. What evidence is necessary.
3. How it may be punished.

As

(1) Rape was anciently felony, and Sir M. Hale says was punished with loss of life, which was afterwards reduced to what he seems to think a less severe punishment, viz. castration and the loss of eyes; and for this assertion he refers to the authority of Bracton. But it should seem that it

was not every case of rape which was so severely punished, but apparently only the rape of a virgin, for he expressly says: “ *Non autem sequitur hujusmodi pena de qualibet femina licet opprimatur. Sequitur tamen alia gravis et gravior secundum quod nupta, vel vidua honesta vivens, sanctimonialis, vel* ”  
*“ alia*

As to THE FIRST POINT, viz. What shall be called rape.

*Sect. 2.* It seems, that rape is an offence in having unlawful and carnal knowledge of a woman by force and against her will.

*Sect. 3.* But it is said, that no assault upon a woman in order to ravish her, however shameless and outrageous it may be, if it proceed not to some degree of penetration, and also of emission, can amount to a rape.

*Sect. 4.* It was a question before 18 Eliz. c. 7. Whether a rape could be committed on a child of the age of six or seven years; but by that statute, "Whosoever shall unlawfully and carnally know and abuse any woman-child under the age of ten years, shall suffer as a felon without clergy." (2)

*Sect. 5.* Upon an indictment for this offence, it is no way material whether such child consented, or were forced; yet it must be proved, that the offender entered into her body, &c.

As to THE SECOND POINT, viz. What evidence is necessary.

*Sect. 6.* Offences of this nature are not any way mitigated by shewing that the woman at last yielded to the violence, if such her consent was forced by fear of death, or of duress.

*Sect. 7.* Nor is it any excuse, that she consented after the fact, or that she was a common strumpet; for she is still under the protection of the law, and may not be forced. But it was anciently said to be no rape to force a man's own concubine.

*Sect. 8.* Also it hath been said by some to be no rape to force a woman who conceives at the time; for it is said, that if she had not consented, she could not have conceived: but this opinion seems very questionable, not only because the previous violence is no way extenuated by such a subsequent consent, but also because, if it were necessary to shew that the woman did not conceive, the offender could not be tried till such time as it might appear whether she did or not, and likewise because the philosophy of this notion may very well be doubted of.

*Sect. 9.* It is a strong, but not a conclusive presumption against a woman, that she made no complaint in a reasonable time after the fact. (3)

As

Bract. 147.  
Dalt. c. 107.  
1 Hale, 30.  
Crom. 100.  
Dyer, 304.

Vide Cro. Cir.  
Com. c. 456.  
3 Bur. 1696.  
C. Car. 332.

Dalt. c. 105.  
607.  
B. Par. 55.  
5 Edw. 4. 6.

1 Rush. Col.  
par. 2. 100.  
Bract. 147,  
118.

S. P. C. 24.  
Finch, 204.  
1 Hale, 628.  
731.

Pulton, 134.  
1 Hale, 630.  
633.  
Rush. Coll.  
part 2. 100.

"*alia matrona. Olim quidem corruptores virginum et et castitatis suspendebant et eorum fautores; moderni tamen temporibus aliter observatur, quod pro corruptione virginis, amittuntur membra, ad predictum est, et de aliis sequitur alia gravis poena corporalis, sed tamen sine amissione vite et membrorum.*" (De Coronâ, lib. 3. 146.)

The law thus continued till 3 Ed. 1. and then by st. of W. 1. it was enacted, "That none ravish or take a damsel within age with her consent nor against her consent, nor no dame, damsel of age, nor any woman against her will: and if any do it, the party may sue within 40 days and common right shall be done; and if none sue within 40 days, the king shall have the suit, and the party convict shall suffer two years imprisonment, and be ransomed at the king's pleasure." By the statute of W. 2. c. 1. "Rape is again made felony."

(2) Sir M. Hale is of opinion that it is rape to have carnal connexion with an infant under the age of twelve years, because, he observes, twelve years is the age of consent in a female. (H. P. C. p. 731.) But Mr. J. Blackstone says that the law has been generally held to extend to infants under ten, (4 Com. c. 15.), though it should seem, he adds, that infants between ten and twelve are still under the protection of the stat. of W. 1.

(3) By the ancient law, according to Bracton, "*Cum igitur virgo corrupta fuerit et oppressa, statim cum factum recess fuerit, cum clamore et luctu debet accurrere ad villas vicinas et ibi injuriam sibi illatam probis hominibus ostendere, sanguinem, et vestes suis sanguine tinctas, et vestium scissuras, et sic ire debet ad prepositum hundredi et ad servientem domini regis et ad coronatores et iudicem et ad priorem comitatus faciat appellum, &c.*" (De Coronâ, 147.)

**As to THE THIRD POINT, viz. How rape may be punished.**

**Sect. 10.** All who are present and actually assist a man to commit a rape, may be indicted as principal offenders, whether they be men or women. (4)

St. Tr. 1. 366. Rush. v. 2. p. 93. Vide Lord Baltimore's Case, 4 Burr. 2179.

**Sect. 11.** It is said, that of old time it was felony, and consequently punishable with death, especially if the party ravished were a virgin, unless such virgin would accept of the offender for her husband, in which case she might save his life by marrying him. But afterwards it was looked upon as a great misdemeanor only, but not felony; and the offender was punished with the loss of his eyes and testicles: and by the statute of *Westminster*, 1. c. 13. it was reduced to a trespass, subjecting the offender to two years imprisonment, and a fine at the king's will. But the smallness of the punishment proving a great encouragement to the offence, it was made felony again, by the statute of *Westminster*, 2. c. 34. and by 18 *Eliz.* c. 7. it is excluded from the benefit of clergy. (5)

**Forcible Marriage.**

By 3 Hen. 7. c. 2. IT IS RECITED, "That women, as well " maidens as widows and wives, having substances, some in " goods moveable, and some in lands and tenements, and some " being heirs apparent unto their ancestors, have, for the lucre " of such substances, been oftentimes taken by misdoers contrary to their will, and after married to such misdoers, or to " others by their assent, or defiled, to the great displeasure of " God, and contrary to the king's laws, and disparagements of " the said women, and utter heaviness and discomfort of their " friends, and to the evil ensample of all others;" AND ENACTED, " That what person or persons that taketh any woman so against " her will unlawfully, that is to say, maid, widow, or wife, that " such taking, procuring, and abetting to the same, and also " receiving wittingly the same woman so taken against her will, " and knowing the same, be felony, and that such misdoers, " takers, and procurators to the same, and receitors knowing the " said offence in form aforesaid, be reputed and judged as principal felons."

† **Sect.**

(4) An infant under 14 years of age is by law presumed incapable to commit a rape, for the law presumes him impotent as well as wanting discretion; but he may be a principal in the second degree as aiding and assisting, if it appear that he had a mischievous discretion, as well as in other felonies. (1 H. H. P. C. 730.)

(5) It is said by Barrington, (Observation on the Ancient Statutes,) that rape anciently meant seduction of the female, and not a forcible carnal knowledge, which was denominated "*viol*." Though this has been denied by others, yet he seems supported by good authorities for the distinction. It may also be matter of curiosity to state, that the famous judgment of Sancho Panza, in the rape cause which came before him while governor of Barataria, is not a fictitious case, but is to be found in a learned writer on the Criminal Law of France, Vonglans, in his chapter on the "*Viol*," or Rape,

has the following passage: "*Je rapporte de Bruan* " (who was another writer on the Criminal Law of " France) *à ce sujet un exemple memorable, qui fait* " *assez sentir combien cette preuve est dangereuse et* " *equivoque (sc. de Viol) et combien le juge doit se* " *tenir en garde contre ces sortes d'accusations. Un* " *juge ayant condamné un particulier, qu'une femme* " *accusoit de viol, à lui donner une certaine somme par* " *forme de dommage et intérêts; il donna en meme* " *tems à ce particulier la permission d'enlever à cette* " *femme l'argent qu'il venoit de lui donner, ce que le* " *jeune homme n'ayant pu faire, à cause de la resis-* " *tance vigoureuse que lui opposa cette femme; le juge* " *ordonna à cette dernière de restituer la somme, sur le* " *fondement qu'elle auroit pu encore mieux defendre son* " *corps que son argent si elle l'eût voulu.*" (Vonglans, edit. l'ar. 4to. p. 498.) This is the exact case in which Sancho gave judgment, and it accorded with that of the French judge.

† *Sect. 2.* But by 3 Hen. 7. c. 2. s. 1. it is provided, "That this act shall not extend to any person taking any woman only claiming her as his *ward* or *bond-woman*."

† *Sect. 3.* By 39 Eliz. c. 9. "All and every person and persons as shall be convicted or attainted of or for any offence made felony by the said act 3 Hen. 7. c. 2. shall lose his and their benefit of clergy: provided always that this act shall not extend to take away clergy, but only from such person and persons as shall be principals or procurers, or accessaries before such offence committed."

In the construction of the 3 Hen. 7. c. 2. the following points have been resolved.

1 Hale, 660,  
661. and 5 St.  
Tr. 468.  
Far. 101, 102.  
Hobart, 182.  
C. Car. 483.  
485, 488, 492.  
Dalis. 22.  
1 And. 115.  
3 Inst. 61.  
Savil, 59.

12 Co. 20, 100, 110.

Hobart, 182.

*Sect. 4. FIRST,* That the indictment must expressly set forth, both that the woman taken away had land or goods, or was heir apparent, and also that she was married or defiled, because no other case is within the preamble of the statute to which the enacting clause clearly refers; for it does not say, that "what person, &c. that taketh any woman against her will," but "what person that taketh any woman so against her will."

*Sect. 5. SECONDLY,* That the indictment ought also to allege that the taking was *for lucre*, because the words of the preamble are so.

C. Car. 485.  
489.

*Sect. 6.* But it need not set forth, that it was *with an intention* to marry or defile the party, because the words of the statute neither require such an intention, nor does the want thereof any way lessen the injury.

Hobart, 182.  
C. Car. 485.  
1 Hale, 660.

*Sect. 7. THIRDLY,* That it is no manner of excuse, that the woman at first was taken away with her own consent, because if she afterwards refuse to continue with the offender, and be forced against her will, she may from that time as properly be said to be taken against her will, as if she had never given any consent at all; for till the force was put upon her, she was in her own power.

Fulwood's  
Case, C. Car.  
493.  
2 Vent. 243.  
See also  
Swinden's  
Case, 5 St. Tr.  
468.

*Sect. 8. FOURTHLY,* That it is not material whether a woman so taken away be at last married, or defiled, with her own consent or not, if she were under the force at the time, because the offender is in both cases equally within the words of the statute, and shall not be construed to be out of the meaning of it, for having prevailed over the weakness of a woman, whom by so base means he got into his power.

3 Inst. 61.  
Dalis. 22.  
S. P. C. 41.  
Far. 132.

*Sect. 9. FIFTHLY,* That those who after the fact receive the offender, but not the woman, are not principals within this statute, because the words are, "*receiving wittingly the same woman so taken, &c.*" but it seems clearly, that they are accessaries after the offence, according to the known rules of common law.

C. Car. 482.

*Sect. 10. SIXTHLY,* That those who are only privy to the marriage, but no way parties to the forcible taking away, or consenting thereto, are not within the statute.

*Sect.*

**Sect. 11. SEVENTHLY,** That where a woman is taken by force in the county of *A.* and married in the county of *B.* the offender may be indicted and found guilty in the county of *B.* because the continuing of the force there amounts to a forcible taking within the statute. C. Car. 488.  
Hobart, 183.  
1 Hale, 600.

† **Sect. 12. EIGHTHLY,** That the woman thus taken away and married, may be sworn and give evidence against the offender who so took and married her, though she be his wife *de facto*; but it seems, that there ought to be concurring evidence to prove the whole fact. Fulwood's  
Case, Cro.  
Car. 484.  
1 Hale, 661.

† **Sect. 13. NINTHLY,** It is said (*a*) to be questionable, whether if a woman, thus forcibly married, freely without constraint live with him who thus marries her any considerable time, her examination may be read in evidence on the trial. But it has been since ruled, (*b*) upon debate, that a wife is a competent evidence for as well as against her husband, on the trial of an indictment on this statute, although she has cohabited with him from the day of her marriage. (a) 1 Hale,  
661.  
(b) Rex v. Perry,  
Bristol  
gaol-delivery,  
1794.

### *Seduction.*

By 4 and 5 Philip and Mary, c. 8. IT IS RECITED, "That maidens and women children of noblemen, gentlemen and others, as well such as be heirs apparent to their ancestors, as others, having left unto them by their father, or other ancestor and friends, lands, tenements, and hereditaments, or other great substances in goods and chattels moveable, for and to the intent to advance them in marriage, somewhat like according to their degrees, and as might be most for their surety and comfort, as well for themselves as of all other their friends and kinsfolks, be oftentimes, unawares to their said friends or kinsfolks, by flattery, trifling gifts, and fair promises, of many unthrifty and light personages, and thereto by the intreaty of persons of lewd demeanour, and others that for rewards buy and sell the said maidens and children, secretly allured and won to contract matrimony with the said unthrifty and light personages, and thereupon either with slight or force oftentimes be taken and conveyed away from their said parents, friends, or kinsfolks, to the high displeasure of Almighty God, disparagement of the said children, and the extreme continual heaviness of all their friends; which ungodly dealing, for lack of wholesome laws to the redress thereof, remaineth a great, familiar, and common mischief in this our commonwealth:" it is therefore ENACTED, "That it shall not be lawful to any person and persons to take or convey away, or cause to be taken or conveyed away, any maid or woman child unmarried, being under the age of sixteen years, out of or from the possession, custody or governance, and against the will of the father of such maid or woman child, or of such person or persons to whom the father of such maid or woman child, by his last will and testament, or by any other act in his life-time, hath or shall appoint, assign, bequeath, give or grant the order, keeping, education or governance of such maid or woman child, except such taking and conveying away as shall be had, made or done by or for such person or persons, as without fraud

Punishment of such as take away maidens, &c. within sixteen years of age, &c.  
5 H. 7. c. 2.

3 Mod. 168,  
169.  
4 Mod. 145.



"fraud or covin be or then shall be the master or mistress of such maid or woman child, or the guardian in socage, or guardian in chivalry, of or to such maid or woman child."

The penalty for taking a maid under sixteen years of age.

† *Sect. 2.* By 4 and 5 Philip and Mary, c. 8. s. 3. it is further enacted, "That if any person or persons above the age of fourteen years shall unlawfully take or convey, or cause to be taken or conveyed, any maid or woman child unmarried, being within the age of sixteen years, out of or from the possession and against the will of the father or mother of such child, or out of or from the possession and against the will of such person or persons as then shall happen to have, by any lawful ways or means, the order, keeping, education, or governance of any such maiden or woman child; that then every such person and persons so offending, being thereof lawfully attainted or convicted by the order and due course of the laws of this realm, (other than such of whom such person taken away shall hold any lands or tenements by knight's service,) shall have and suffer imprisonment of his or their bodies, by the space of two whole years, without bail or mainprise, or else shall pay such fine for his or their said offence, as shall be assessed by the council of the queen's highness, her heirs or successors, in the star-chamber at *Westminster*."

2 Mod. 128.

The penalty for taking away, deflowering or contracting matrimony with a woman under sixteen years of age.

† *Sect. 3.* By 4 and 5 Philip and Mary, c. 8. s. 4. it is further enacted, "That if any person or persons shall so take away, or cause to be taken away, as is aforesaid, and deflower any such maid or woman child, as is aforesaid, or shall against the will, or unknowing of or to the father of any such maid or woman child, if the father be in life, or against the will, or unknowing of the mother of any such maid or woman child (having the custody or governance of such child, if the father be dead) by secret letters, messages, or otherwise, contract matrimony with any such maiden or woman child, except such contracts of matrimony as shall be made by the consent of such person or persons as by the title of wardship shall then have or be intitled to have the marriage of such maid or woman child, that then every such person or persons so offending, being thereof lawfully convicted, as is aforesaid, shall suffer imprisonment of his or their bodies, by the space of five years, without bail or mainprise, or else shall pay such fine for his or their said offence, as shall be assessed by the said council in the said star-chamber; the one moiety of all which forfeitures and fines shall be to the king and queen's majesties, her heirs and successors, the other moiety to the parties grieved."

Who may hear and determine the offences aforesaid. Cro. Car. 465.

† *Sect. 4.* By 4 and 5 Philip and Mary, c. 8. s. 5. it is further enacted, "That the king and queen's highness honourable council of the star-chamber, by bill of complaint or information, and justices of assize, by inquisition or indictment, shall have authority by virtue of this act to hear and determine the said offences; upon every which indictment and inquisition, such process shall be awarded and lie, as upon an indictment of trespass at the common law."

*Sect.*

† *Sect. 5.* By 4 and 5 Philip and Mary, c. 8. s. 6. it is further enacted, "That if any woman child or maiden, being above the age of twelve years, and under the age of sixteen years, do at any time consent or agree to such person that so shall make any contract of matrimony, contrary to the form and effect of this statute, that then the next of the kin of the same woman child or maid, to whom the inheritance should descend, return or come, after the decease of the same woman child and maid, shall, from the time of such assent and agreement, have, hold and enjoy all such lands, tenements and hereditaments, as the same woman child and maiden had in possession, reversion or remainder, at the time of such consent and agreement, during the life of such person that shall so contract matrimony: and after the decease of such person so contracting matrimony, that then the said lands, tenements and hereditaments, shall descend, revert, remain, and come to such person or persons as they should have done in case this act had never been had or made, other than to him only that so shall contract matrimony."

The forfeiture of a woman consenting to an unlawful contract. 3 Mod. 81.

† *Sect. 6.* By 4 and 5 Philip and Mary, c. 8. s. 7. Provided always, "That this act, nor any thing therein contained, shall extend to take away or diminish any liberty, custom or authority, touching or concerning any orphan or orphans, which now be or hereafter shall be within the city of *London*, or any other city, borough or town, where orphans are commonly used to be provided for, either by grant or by custom; but that the lord mayor of the said city of *London*, and the aldermen of the same for the time being, and all and every other head officer or officers of any other city, borough or town, where such orphans be provided for, shall and may have and take like rule, order, keeping and charge of such orphan and orphans, and of all their lands, tenements, goods and chattels, as heretofore they or any of them lawfully had or used, or lawfully might have had and used, if this had not been made."

Orders for orphans.

Upon this statute the following points have been holden.

† *Sect. 7.* FIRST, It is settled, that although the above statute gives authority only to the star-chamber and justices of assize to hear and determine the offence mentioned, yet that information or indictment will lie thereon in the court of king's bench, for there are no negative words, and therefore the jurisdiction of that court is not excluded.

*Rex v. Moor*, 2 Lev. 179. S. C. 3 Keb. 708. 715. S. C. 2 Mod. 129.

† *Sect. 8.* It seems also, that an information by the master of the crown office will lie for this offence as at common law, for that the above statute does not create any new offence, but only aggravates the punishment.

*Rex v. Twisleton*, 1 Sid. 387. S. P. *Rex v. Thorp*, 5 Mod. 221. S. C. 2 Keb. 432.

† *Sect. 9.* It seems also, that if the indictment or information state that the defendant "*being* above the age of fourteen years" took one *A.* then being a virgin unmarried, possessed of moveable goods and seised of lands of great value, out of the custody "of her mother, &c." the word *being* is a sufficient averment of the facts which follow.

*Rex v. Moor*, 2 Lev. 17. S. P. *Rex v. Boyal*, 2 Bun. 332.

† *Sect. 10.* It seems also, that it is no legal excuse for this offence,

*Rex v. Twi-*

leton and  
others, 1 Lev.  
257. S. C.  
1 Sid. 387.  
S. C. 2 Keb.  
432.

fence, that the defendant being related to the lady's father, and frequently invited to the house, made use of no other seduction than the common blandishments of a lover to induce the lady secretly to elope and marry him, if it appear that the father intended to marry her to another person, and so the taking against his consent.

Hicks v. Gore,  
3 Mod. 84.

† Sect. 11. But where a widow fearing her daughter, a rich heiress, might be seduced into an improvident marriage, placed her under the care of a female friend, who sent for her son from abroad, and married him openly in the church and during canonical hours to the heiress before she had attained the age of sixteen, and without the consent of her mother who was her guardian, it was held to be no forfeiture of her estate; for in order to bring the offence within the statute, it must appear that some artifice was used; that the elopement was secret; and the marriage to the disparagement of the family.

3 Mod. 84.  
169.

1 Brown, Cases  
in Chancery.

† Sect. 12. It is agreed, however, that the forfeiture extends as well to the infant who consents as to the husband who takes.

Calthorpe v.  
Axtell, 3 Mod.  
169.

† Sect. 13. It is said, that there must be a continued refusal of the parent or guardian, for that if they once agree, though they afterwards dissent, it is an assent within the statute.

Rex v. Corn-  
forth, 2 Stra.  
1162.  
S. C. 1 Const's  
Poor Laws.

† Sect. 14. It has also been decided, that an information will lie for taking away a *natural daughter* under sixteen years of age from the care and custody of her putative father, it being an offence within the statute 4 and 5 Philip and Mary, c. 8. s. 3.

Of a nature similar to the offence of enticing away women children under the age of sixteen, which when done with a view of possessing their property is, as we have seen, provided for by the above statute of 4 and 5 Philip and Mary, is the offence of enticing away young women from their parents or guardians, above that age, for the purpose of prostitution. Lord Grey and others were indicted for a conspiracy to entice away the Lady Henrietta B. an unmarried daughter of the Earl of Berkley, of the age of eighteen years, (the lady being then unmarried and living under the protection of the Earl,) for the purpose of living in fornication with the said Lord Grey. At the trial no force was proved as used against the young lady, on the contrary she voluntarily eloped from her father's house; and it appeared that no other means were used than a solicitation to unlawful lust. There was, however, this aggravation of the offence, that Lord Grey was at that time married to the lady's eldest sister. The indictment was at common law, and none of the judges expressed any doubt upon the law, but the parties were convicted. No judgment was however given, as the family compromised the matter. (1 East, P. C. 461.)

#### *Stealing away Infants.*

By 54 Geo. 3. c. 101. it is enacted, "that if any person shall  
"maliciously, either by force or fraud, lead, take, or carry away,  
"or decoy, or entice away, any child under the age of ten years,  
"with intent to deprive its parent or parents, or any other per-  
"son having the lawful care or charge of such child, of the pos-  
session

“ session of such child, by concealing and detaining such child  
 “ from such parent or parents, or other person or persons having  
 “ the lawful care or charge of it ; or with intent to steal any article  
 “ of apparel or ornament, or other thing of value or use upon  
 “ or about the person of such child, to whomsoever such article  
 “ may belong ; or shall receive and harbour, with any such intent  
 “ as aforesaid, any such child, knowing the same to have been so,  
 “ by force or fraud, led, taken, or carried, or decoyed, or enticed  
 “ away as aforesaid ; every such person or persons, and his, her,  
 “ or their counsellors, procurers, aiders, and abettors shall be  
 “ deemed guilty of felony, and shall be subject and liable to all  
 “ such pains, penalties, punishments, and forfeitures as by the  
 “ laws now in force may be inflicted upon, or are incurred by, per-  
 “ sons convicted of grand larceny.”—By a subsequent clause, the  
 act was not to extend to the father of an illegitimate child who  
 took it away from the mother ; nor is the act to extend to Scotland.

*Compulsory Marriage of Paupers.*

So the compulsory marriage of paupers has been held such a  
 restraint upon the parties as to support an indictment against  
 parish officers who have been guilty of this offence with a view  
 of relieving their own parish and charging another with the main-  
 tenance of the pauper (*R. v. Tarrant*, 4 Bur. 2106.); yet when  
 the paupers have voluntarily intermarried without any threats or  
 constraint, though the parish officers have given the man money to  
 do it, the fact is not indictable, for marriage being lawful in itself,  
 the practice to procure it must be by some unlawful means to  
 make it an indictable offence, (1 East, P. C. 461.)

CHAP. XVII.

OF BURGLARY.

**OFFENCES** against the habitation of a man are of two kinds : F. Cor. 178.  
 185. 264.  
 Pulton, 132.

1. Burglary.

2. Arson.

**BURGLARY** is a felony at the common law, in breaking and Staun. 30.  
 entering the mansion-house of another, or (as some say) the walls, 1 Hale, 549.  
 or gates of a walled town, in the night, to the intent to commit Dalt. c. 151.  
 some felony within the same, whether the felonious intent be Cicero pro  
 executed, or not. Dom. c. 41.  
 Leg. Can.  
 1. 61. Wilk. Leg. Ang. Sax. p. 273. Spelman, tit. Hamsecken. Sum. 79. 2 Hale, 360. 22 Ass.  
 59. 95. B. Cor. 93. 3 Inst. 63. Crom. 31. 1 Comm. 223.

For the better understanding whereof, I shall consider the fol-  
 lowing particulars :

1. What shall be accounted night-time for this purpose.

2. Whether there must be both an actual entry and breaking.

3. What breaking is sufficient.

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4. What entry is sufficient.
5. In what place this offence may be committed.
6. What degree of guilt is required in the principal intention.
- † 7. In what manner burglary is deprived of the benefit of clergy.
- ‡ 3. Of statutes tending to prevent this offence.

As to THE FIRST POINT, *viz.* What shall be accounted *night-time* for this purpose.

Dalt. c. 151.  
S. P. C. 30.  
3 Inst. 63.  
Savil, 47.  
Crom. 32, 33.  
7 Co. 6, 34.  
1 Hale, 550.  
Roll. 521.  
Moor, 660.  
Cro. Eliz. 583.

*Sect. 2.* There are some opinions, that burglary may be committed at any time after sun-set, and before sun-rising; but it seems the much better opinion, that the word "*noctanter*," which is precisely necessary in every indictment for this offence, cannot be satisfied in a legal sense, if it appear upon the evidence, that there was so much day-light at the time, that a man's countenance may be discerned thereby.

9 Co. 66. 4 Com. 221.

As to THE SECOND POINT, *viz.* Whether there must be both *an entry* and a *breaking*.

Dyer, 99.  
S. P. C. 30.  
3 Inst. 61.  
1 Hale, 551.  
556.  
Con. Dalt. c.  
151.  
Crom. 31.  
Dalison, 22.  
Pult. 132. Post. 108.

*Sect. 3.* Notwithstanding some loose opinions to the contrary, there seems to be no good cause to doubt, but that both are required to complete this offence; for the words "*fregit*" and "*intravit*" being both of them precisely necessary in the indictment, both must be satisfied: and *à fortiori*, therefore, there can be no burglary, where there is neither of them; as if on a bare assault upon a house the owner fling out his money.

As to THE THIRD POINT, *viz.* What *breaking* is sufficient. (1)

3 Inst. 64.  
1 Hale, 508.  
527, 531.  
Kelynge, 67.  
Hutton, 20.  
C. Car. 65. 225.

*Sect. 4.* It seems agreed, that such a breaking as is implied by law in every unlawful entry on the possession of another, whether it lie open or be inclosed, and will maintain a common indictment, or action of trespass *quare clausum fregit*, will not satisfy the words *feloniè et burglariter fregit*, except in some special cases, in which it

(1) There has been a variety of decisions as to nice points of breaking and entering.—In general, they are questions of fact whether the house was *broken*, or *entered*; the smallest degree of either being sufficient to constitute that part of the offence. With respect to breaking, the older authorities seem to imply that, in cases of actual (not constructive breaking) there must be either a removal of some fastening, in the cases of opening doors and windows, or an actually breaking of the house.—But modern cases have gone farther.—For it has been held, that opening a sash-window only held down by the weight of the pulleys, and not otherwise fastened, is a "breaking." (*R. v. Harrison*, E. T. 1821. Chetwynd, Burn, App. 86.)—So lifting a door-flap of a mill, not otherwise fastened than by its own weight, has also been held a breaking (*E. P. C. v. 2* p. 48).—But in another case, not distinguishable from the last on principle (Callan's case, O. B. Sess. Nov. 1809), the person was convicted of burglary, by entering at a cellar-flap,

kept down by its own weight only, and no other fastening. In the case reserved, the prisoner was discharged, but no opinion publicly given.—(Chetwynd's Burn, vol. 1 p. 396.) Lord Hale (*H. P. C. vol. 1. p. 532*) says, "These acts amount to an actual breaking: opening the casement, or breaking the glass window; picking open the lock of a door with a false key, or putting back the lock with a knife or dagger; unlatching the door that is only latched; to put back the leaf of a window with a dagger," all of which cases imply the removal of some fastening. With respect to the entry, it is agreed that the slightest degree of entry for the felonious purpose is sufficient. As when thieves coming by night to rob a house, the owner went out and struck one of them, another of them made a pass with a sword at some of the family who were in the entry of the house, and in so doing, his hand passed beyond the threshold into the passage.—This was ruled to be a sufficient entry to constitute a burglary. (*E. P. C. 493*.)

it is accompanied with such circumstances as make it as heinous *Dyer*, 99.  
as an actual breaking.

*Sect. 5.* And from hence it follows, that if one enter into a house by a door which he finds open, or through a hole which was made there before, and steal goods, &c. or draw any thing out of a house, through a door or window which were open before, or enter into a house by the doors open in the day-time, and lie there till night, and then rob and go away, without breaking any part of the house, he is not guilty of burglary. 2 Hale, 558.  
1 And. 114, 115.  
Savil, 59.  
Foster, 107.

*Sect. 6.* But it is certain, that he would have been guilty thereof if he had opened the window, or unlocked the door, or broke a hole in the wall, and then entered, &c. or if having entered by a door which he found open, or having lain in the house by the owner's consent, he had but unlatched a chamber door, or if he had come down by the chimney (2) (in which case though it might be said that the house was open there, and so not actually broken, yet it was as much inclosed as the nature of the thing would bear.) Foster, 107.

*Sect. 7.* And according to some opinions, he would have been in like manner guilty, if upon an assault made by him upon the house, with an intent to rob it, the owner had opened the door in order to drive him off, and thereupon he had entered; in which case, as some say, the opening of the door by the owner, being occasioned by the felonious attempt of the other, is as much imputable to him as if it had been actually done by his own hands. Crom, 32.  
Contra, 1 And.  
115.

*Sect. 8.* And it has also been resolved, that where divers persons came to a house with an intent to rob it, and knocked at the door, pretending to have business with the owner, and being by that means let in, rifled the house, they were guilty of burglary. (a) (a) Le Mott's  
case related by  
Wild to Ke-  
lynge, 42.

*Sect. 9.* Also it hath been adjudged, that those were no less guilty, who, having a design to rob a house, took lodgings in it, and then fell on the landlord and robbed him; for the law will not endure to have its justice defrauded by such evasions. Kely, 52, 53, 63.

*Sect. 10.* And for the like reason, *à fortiori*, it has been resolved, that where persons, intending to rob a house, raised a HUE AND CRY, and prevailed with the constable to make a search in the house, and having got in by that means, with the owner's consent, bound the constable, and robbed the inhabitants, they were guilty of burglary. For there cannot be a greater affront to public justice, than to make use of legal process as a stale for such villainous purposes; and therefore the whole act is esteemed tortious *ab initio*. (3) Crom, 32. Dalt.  
c. 151. 1 Hale,  
552. 3 Inst. 64.  
4 Com. 225.

As

(2) Lord Hale once doubted whether entering the house by coming down the chimney was a breaking, but it appearing that the thief loosened some bricks in his descent which fell into the room, he ruled it to be a burglarious breaking. (1 H. H. P. C. p. 552). It has, however, since been ruled that getting into the chimney at the top, thereby to enter the house with a burglarious intent, is both a breaking and entering, for that the chimney is a

part of the dwelling house. (M.S.—Appendix to Chetwynd, Burn, p. 86.)

(3) "At the O. B. sessions, before Easter T. 1704, Ann Hawkins was indicted for burglary: "and upon the evidence it appeared that she was acquainted with the house, and knew that the family were in the country; that meeting with the boy who kept the key, she desired him to go with her to the house, and, to induce him, promised him a  
x 2 "pot

As to THE FOURTH POINT, *viz.* What entry is sufficient to this purpose.

Dalt. c. 151.  
Kelynge, 67.  
Pulton, 132.  
1 And. 115.  
1 Hale, 553, 553a.  
Crom. 31, 32.  
4 Comm. 315.  
(a) See the case  
of Geo. Gibbons  
in point, Foster,  
108.  
Case of John  
Hughes, cases  
C. L. 313.

*Sect. 11.* It seems agreed, that any the least entry, either with the whole or with but part of the body, or with any instrument, or weapon, will satisfy the word "*intravit*" in an indictment of burglary; as if one do but put his foot over the threshold, or his hand, (a) or a hook or pistol within a window, or turn the key of a door which is locked on the inside, or discharge a loaded gun into a house, &c.

† *Sect. 12.* But it seems, that the instrument must be introduced for the purpose of committing the felony. Therefore, where thieves, having bored a hole *through* the door with a *center bit*, and part of the chips were found in the inside of the house, yet as they had neither got in themselves, nor introduced a hand or instrument for the purpose of taking the property, the entering was ruled incomplete.

1 Hale, 439, 555.  
Fost. 350, 353.  
Kely. 111.  
Crom. 32.

*Sect. 13.* It is certain, however, that in some cases one may be guilty of burglary, who never made an actual entry at all; as where divers come to commit a burglary together, and some stand to watch in adjacent places, and the others enter and rob, &c. for in all such cases, the act of one is in judgment of law the act of all.

Dalton, 151.  
1 Hale, 555.  
(b) *Stra.* 881.  
10 St. Tr. 433.

*Sect. 14.* And upon the like ground it has been deliberately determined (b) upon a special verdict, that a servant who, confederating with a rogue, lets him in to rob a house, &c. is guilty of burglary as much as the rogue himself; for it is clear, that if the servant were out of the house, the entry of the other would be adjudged to be his also; and what difference is there when he is in the house? (4)

*Sect. 15.* It is recited by 12 Ann. c. 7. "That there had been some doubt, whether the entering into a mansion-house, without breaking the same, with an intent to commit some felony, and breaking the said house in the night-time to get out, were burglary;" and thereupon it is declared and enacted, "That if any person shall enter into the mansion or dwelling-house of another by day or by night, without breaking the same, with an intent to commit felony, or being in such a house shall commit any felony, and shall in the night-time break the said house to get out of the same, such person is, and shall be taken to be guilty of burglary, and ousted of the benefit of clergy, in the same manner as if such person had broken and entered the said house in the night-time, with an intent to commit felony there."

As

"pot of ale. The boy accordingly went with her, opened the door and let her in. She then sent the boy for a pot of ale, robbed the house and went off. This being in the night time, Holt, C. J. Tracy and Burd adjudged it to be clearly burglary in the woman; for she prevailed with the boy by fraud to open the door with intent that she might rob the house." (2 East, P. C. 485.)  
"So getting possession by a judgment against the casual ejector upon false affidavits and with-

"out any colour of title, and then rifling the house, was ruled to be within the statute against breaking the house and stealing goods therein." (2 F. 485.)  
The above are cases of *constructive* breakings.

(4) The breaking and entering need not both be on the same night to constitute the offence, for if the breaking be on one night and the entry through the breaking on another night—both being *noctantur*, both shall be laid as done the last night. (11 H. P. C. 551.)

As to THE FIFTH POINT, *viz.* In what *place* this offence may be committed.

*Sect. 16.* It seems to be the current opinion at this day, that it can be committed only in a *dwelling-house*; and that the indictment for it must necessarily allege the fact *in domo mansionali*. (5)

27 Ass. 38. Fost. 38, 39. 1 And. 302. S. P. C. 30. Kelynge, 27. Popham, 42. 1 Hale, 550. 4 Co. 40. 3 Inst. 64. 67. B. Cor. 93. 22 Ass. 39. 95. Dalt. 131. Prin. P. L. 271.

*Sect. 17.* And *Sir Edward Coke* seems to say, that the breaking a church, &c. is therefore burglary, because the church is the mansion house of God. But I can find nothing in the more ancient authors to countenance this nicety; for the general tenor of the old books seems to be, that burglary may be committed in breaking houses, or churches, or the walls or gates of a town.—And *Staundforde* and *Anderson* mention precedents of indictments of burglary *in domo* without adding *mansionali*. However the constant course of late precedents and opinions makes it certainly very dangerous, if not an incurable fault, to omit the word *mansionalis* in an indictment of burglary in a house; and therefore without question, it ought always to be inserted where the truth of the case will bear it. But surely it cannot be necessary or proper to have any such word in an indictment of burglary in a church, which, by all the books above cited, seems to be taken as a distinct burglary from that in a house.

*Sect. 18.* However it is agreed by all, that a house wherein a man dwells but for part of the year, (a) or a house which one has hired to live in, and brought part of his goods into, but has not yet lodged in, or a chamber in one of the inns of court wherein a person usually lodges, or house which a man's wife hires without his privity, and lives in by herself without him, may be called his dwelling-house; and will sufficiently satisfy the words *domus mansionalis* in the indictment, whether any person were actually therein, or not, at the time of the offence.

(a) See the case of John Nutbrown in point, Foster, 76. 1 Hale, 556. Crom. 33. Dalt. c. 151. Moor, 660. 4 Coke, 40. 1 Jones, 394. Kely. 43. 46. Pop. 12. 52. Pulton, 132.

† *Sect. 19.* But it has been held, that burglary cannot be committed in a house under repair, although part of the property of its owner be there deposited; for until he take possession with intent to inhabit, it is not his mansion or dwelling-house.

Lyon's case, Cases C. L. 169.

† *Sect. 20.* So also it hath been ruled, that burglary cannot be committed in an unfinished house, if neither the owner nor his servants have taken possession of it, although one of the workmen of the owner sleep therein for the purpose of protecting it.

Fuller's case, Cases C. L. 169, *notis*.

#### *Sect.*

(5) As to what shall be considered the mansion house, and to what buildings it shall extend—the mansion not only includes the dwelling-house, but also all the out-houses, such as barns, stables, cow-houses, dairy-houses, and the like, if they be part of the messuage, though they be not under the same roof or joining contiguous to it. 1 H. H. P. C. 558.

John Eggeinton and others were indicted for burglary in the dwelling-house of Matthew Robinson Boulton. It appeared that there was a range

of buildings, in the centre of which was a manufactory, &c.; the wings were dwelling-houses of persons engaged in Mr. B.'s manufactory, the whole being under the same roof and within the same common fence, but no internal communication. Mr. R. Boulton lived in one wing, and a steward of his in a house in the other wing. It was held that the manufactory was no part of the dwelling-house of any of the parties who lived in the wings; and the prisoners were discharged of the burglary. 2 E. P. C. 496.



3 Institute, 64.  
Dalt. c. 151.  
B. Cor. 180.  
Crompton, 32.  
1 Hale, 558.

**Sect. 21.** But all out-buildings, as barns, stables, dairy-houses, &c. adjoining to a house, are looked upon as part thereof, and consequently burglary may be committed in them.

4 Com. 245.

**Sect. 22.** But if they be removed at any distance from the house, it seems, that it has not been usual of late to proceed against offences therein as burglaries.

Rex v. Garland,  
Assizes for Som-  
merset, 1776,  
on a case reserved  
by EYRE,  
Baron.

† **Sect. 23.** And therefore it has been decided, that an out-house occupied by the prosecutor with his dwelling-house, but separated therefrom by an open passage eight feet wide, and not connected with the dwelling-house, by any fence inclosing both the said out-house and dwelling-house, is not a place in which a burglary can be committed.

Castle's case,  
1 Hale, 558.

† **Sect. 24.** But it has been held, that the breaking and entering in the night-time into a *bake-house* eight or nine yards distance from the dwelling-house, but connected with each other by means of a paling, is burglary.

Case of Gibson  
and others,  
Cases C.L. 287.

† **Sect. 25.** So also burglary may be committed in a shop adjoining to a house, if under the same roof, or within the curtilage, although there be no internal communication between the shop and the house, and although no person sleep in the shop.

1 Hale, 556.  
Con. Kely. 83.  
Crom. 33.  
Dalt. c. 151.  
3 Inst. 65.  
Co. Lit. 49.

**Sect. 26.** If several persons *dwell* in one house, as servants, guests, tenants at will, or otherwise, having no fixed and certain interest in any part thereof, and a burglary be committed in any of their apartments, it seems clear, that the indictment shall lay the offence in the mansion house of the proprietor, &c.

See Rex v. Gar-  
sel, Comp. 4.

**Sect. 27.** But if one *hire* a distinct apartment in a house for his *lodging* for a certain time, and a burglary be committed therein, I can see no good reason why the indictment may not lay the offence *in domo mansionali* of such lodger; for it seems to be agreed, that the indictment for a burglary committed in a chamber in one of the *inns of court*, may lay the offence *in domo mansionali* of the owner of the chamber; and why may not such an apartment, with as much propriety be called the mansion-house of him that takes it, during the time that he has a certain interest in it? for so long as it is severed by the lease, it seems in the eye of the law to be as distinct from the other parts of the house, as if the person who rents it had a freehold or inheritance in it. As to the objection, that he goes into the house by the same door with the other inhabitants, and therefore is but an inmate, and the whole ought to be considered but as one house, I answer, that he must have some way to his apartment as incident to his interest in it, and that such way lying through a door which is common to him with others, doth not make the apartment itself in any respect less his own, than a way through a door belonging to himself only would have done; and if the law be so in this case, it seems to me very reasonable also, that if such a lodger take also a cellar in the said house, a burglary committed in such cellar, may be alleged *in domo mansionali* of the lodger, whether the  
cellar

cellar had any communication with the house or not (a); for since it seems to be agreed, that a barn or stable, or other out-building near to a house, shall be looked on as part thereof, why should not such a cellar have the like estimation?

(a) Provided the owner does not dwell in any part of the house. *Sed quære*, for *Kel.* 83, seems *contra*.

*Sect.* 28. However it is agreed by all, that if one hire a part of a house to lodge in, which is *actually divided from the rest, and have a door of its own to the street*, a burglary therein may be alleged in *domo mansionali* of such person.

† *Sect.* 29. It has therefore been decided, that when the owner of a house had let the whole of it in apartments to different persons, and did not inhabit any part of himself; and one of the inmates rented a shop, a parlour, and a cellar underneath, at £12. 10s. a year, which cellar the owner afterwards reserved to himself to keep lumber in, and deducted 10s. yearly from the £12. 10s. for the rent of the same, the shop and parlour of such inmate, if feloniously broken open in the night-time, may be laid to be the dwelling-house of such inmate.

*Rex v. Rogers*, O. B. Oct. Session, 1772, on a case reserved for the opinion of the Judges.

† *Sect.* 30. So also where a house was situated in a mews, and the whole of it let out in lodgings to three families, with only one outer door, which was common to all the inmates, one of whom rented the ground floor and a single room up one pair of stairs, and the door of the parlour was broke open in the night, it was determined that this parlour was well laid to be the dwelling-house of the particular inmate.

*Trapshaw's case*, Cases C. L. 333.

† *Sect.* 31. So also where a coachman lived in rooms situated over the coach-house and stables of a public mews, but never paid any rent, nor were the premises rated in the parish-books except as appurtenances to the coach-house and stables, the way to which was down a passage leading to a staircase which led to these rooms through a door which was never fastened, but there was a door at the top of the staircase to the rooms which was locked at night, it was held, that these rooms were such a dwelling-house in which burglary might be committed.

*Turner's case*, Cases Cro. L. 249.

† *Sect.* 32. So also where the inmate of a house so let had two apartments therein, *viz.* a sleeping room up one pair of stairs, and a working-shop in the garret, which he rented by the week as tenant at will, and a burglary was committed in the *work-shop*, it was determined that the burglary was well laid in the mansion-house of such inmate.

*Richard Carroll's case*, O. B. Febr. Sess. 1782. Cases Cro. Law, 205.

*Sect.* 33. But if he had taken it as a shop or work-house for his use in day-time only, it seems that a felony therein cannot be alleged in a mansion-house; not of him that lets it, because it is severed by the lease from that part of the house which belongs to him, nor of him to whom it is let, because he takes it not to lodge in.

*Hutton*, 33. 1 Hale, 557, 558. *Vid.* 13 Geo. 3. c. 38. respecting burglary in the workshops of the Plate Glass Manufactory.

† *Sect.* 34. But if two partners in trade respectively live in adjoining houses, the shop underneath being common to both, and no internal communication between the two houses, but each of them having an outer door from the street, each house may be said to be the dwelling-house of its respective inhabitant, although the rent and taxes are paid out of the joint funds.

*Jones' case*, Cases C. L. 434.

*Sect.*

22 Ass. 95.  
B. Cor. 93.  
S. P. C. 30.  
Dalt. c. 151.  
(a) But see  
ante, p. 133.

**Sect. 35.** From what has been said it clearly appears, that no burglary can be committed by breaking into any ground inclosed, or booth, or tent, &c. (a); for there seems to be no colour, from any authority ancient or modern, to make any offence burglary that is not done either against some house, or church, or the walls or gates of some town.

As to THE SIXTH POINT, viz. What degree of guilt is required in the principal intention of the offender.

Dyer, 99.  
3 Inst. 65.  
Kely. 30. 67.  
Crom. 32.  
1 Hale, 562.

**Sect. 36.** It seems clear, that there can be no burglary but where the indictment both expressly alleges, and the verdict also finds, an intention to commit some *felony*; for if it appear that the offender only meant to commit a *trespass*, as to beat the party, &c. he is not guilty of felony.

Rex v. Bingley,  
O. R. Trin.  
3 Jac. 2. M. S.

† **Sect. 37.** And therefore where a servant embezzled money intrusted to his care, ten guineas of which he deposited in his trunk, and quitted his master's service, but afterwards returned, broke and entered the house in the night, and took away the ten guineas; it was adjudged no burglary, because it did not appear that he entered to commit a felony, but a trespass only.

(a) Rex v.  
Gray, Strange,  
482. in point.

**Sect. 38.** However, it seems much the better opinion, that an intention to commit a *rape*, (a) or such other crime which is made felony by statute, and was a trespass only at common law, will make a man guilty of burglary, as much as if such offence were a felony at common law; because wherever a statute makes any offence felony, it incidentally gives it all the properties of a felony at common law. (6)

As to THE SEVENTH POINT, viz. In what manner burglary is deprived of the benefit of clergy.

† **Sect. 39.** By 18 Eliz. c. 7. "If any person or persons shall commit or do any manner of felonious burglary, he or they shall suffer death without benefit of clergy."

† **Sect. 40.** By 5 and 4 Will. and Mary, c. 9. "All and every person or persons that shall counsel, hire, or command any person to commit any burglary, shall not have the benefit of his or their clergy."

As

(6) Lord Hale states, that, to constitute burglary, the house must be broken and entered with intent to commit a felony at common law, and not a fact made felony by statute. And he therefore says, it has been doubted whether breaking a house in the night, with intent to commit rape, were burglary or not: Cropton thinking it would not, because made felony by statute Westm. 2. c. 34.; and Dalton (Ch. 1. c. 5. 5. Stamf. 31.) thinking it would, because rape was originally felony at common law, though reduced to misdemeanor by statute. It seems, however, now, as Hawkins observes, to be the better opinion, that if the house be broke, and with intent to commit any felony, whether so by common law or made so by statute, the offence is burglary. (2 F. P. C. 511. Black. Com. v. 4. c. 16.)

In the case of Rex v. Knight and Roffey, who broke into a dwelling-house in the night with intent to rescue some smuggled goods, which were laid in the indictment as the property of the officer, and stated the intent to be to steal those goods, the jury found, that the prisoners broke into the house with intent to take the goods on behalf of one Smith, from whom they had been seized. The judge held, that this indictment was not well supported, there being no intention to steal; but if the indictment had been for breaking, &c. the house with intent feloniously to rescue goods seized, &c. that being made felony by stat. 19 Geo. 2. c. 34. the Chief Baron and some other of the judges held, that it would have been burglary. (2 East, P. C. 510.)

As to THE EIGHTH POINT, *viz.* Of the statutes which have been passed with a view to prevent this offence.

† *Sect.* 41. By 23 Hen. 8. c. 5. “If any person or persons be indicted for the death of any evil-disposed person or persons attempting burglariously to break mansion-houses in the night-time, the person or persons so indicted shall be thereof fully acquitted and discharged.”

† *Sect.* 42. By 10 and 11 Will. 3. c. 23. “Whoever shall apprehend any person guilty of burglary shall have a certificate, exempting him from all parish and ward offices.” By 58 Geo. 3. c. 70. s. 2. this certificate cannot be assigned to any other person.

† *Sect.* 43. By 10 Geo. 3. c. 48. “Buyers and receivers of stolen jewels, gold or silver plate, watches, when the stealing shall have been accompanied with a burglary, shall be triable as well before the conviction of the principal, whether he shall be in or out of custody, as after, and transported for fourteen years.”

## CHAP. XVIII.

### OF ARSON.

ARSON is a felony at common law, in maliciously and voluntarily burning the house of another by night or by day.

And I shall consider,

1. What is such a house in which arson may be committed.
2. Whether this offence may be committed in the offender's own house.
3. How much of the house ought to be burnt.
4. With what degree of malice.
- † 5. In what cases the benefit of clergy is taken from this offence.

As to THE FIRST POINT, *viz.* What is such a house in which arson may be committed.

*Sect.* 1. It seems agreed, that not only a mansion-house, and the principal parts thereof, but also any other house and the out-buildings, as barns and stables adjoining thereto, and also barns full of corn, whether they be adjoining to any house or not, are so far secured by law, that the malicious burning of them is arson. And it is said, that in an indictment they are well expressed by the word *domus*, without adding *mansionalis*.

*Sect.* 2. But it seems, that the burning of the frame of a house or of a stack of corn, &c. is not accounted arson, because it cannot come under the word *domus*, which seems at present to be thought necessary in every indictment of arson.

1 Hale, 568.  
3 Inst. 67.  
Britt. s. 16.  
S. P. C. 36.  
Dalt. c. 105.  
1 Burn, 289.

*Sect.*

*Sect. 3.* Yet anciently the burning of a stack of corn was accounted arson; † and now by 9 Geo. 1. c. 22. it is arson to set fire to any "house, barn, out-house; or to any hovel, cock, mow, " or stack of corn, straw, hay, or wood."

Taylor's case,  
Cases Cro.  
Law, 46.

† *Sect. 4.* But it has been determined, that a *paper-mill* is not an *out-house*, within the meaning of the statute.

By statute 9 Geo. 3. c. 29. s. 2. "Whereas no effectual provision hath heretofore been made for preventing the burning of " mills, be it enacted, that if any person or persons shall (after " the 1st day of July, 1796.) wilfully or maliciously burn or set " fire to any wind saw-mill or other wind-mill, or any water- " mill or other mill, such person so offending, being lawfully " convicted thereof, shall be adjudged guilty of felony without " benefit of clergy."

Judd's case,  
Cases Cro.  
Law, 381.

† *Sect. 5.* It has also been determined, that setting fire to a *parcel* of unthrashed wheat in the night, is not sufficiently descriptive of the offence of setting fire to "a cock, mow, or stack " of corn," &c. to bring the offender within the statute.

Rex v. Donavan, Cases C.  
L. 61.  
S. C. 2 Blk.  
Rep. 682.

† *Sect. 6.* It has been determined, that the setting fire to an apartment of a common gaol of a county to which a dwelling-house for the keeper to live in adjoins, the entrance into the prison being through the dwelling-house, is arson, although a wall separates the prison from the house.

As to THE SECOND POINT, viz. Whether arson may be committed in the offender's own house.

Holme's case,  
1 Jones, 351.  
C. Car. 377.  
Sed vide Foster, 116.

*Sect. 7.* It seems clearly agreed, that one seised in fee, or but possessed for years, of a house standing by itself at a distance from all others, cannot commit felony in burning the same.

Rex v. Spalding, Bury Lent Assizes, 1780, on a case reserved, Cases Crown Law, 193.

† *Sect. 8.* It has also been decided, that a tenant in possession of a copyhold dwelling-house cannot be guilty of arson by burning the same, although he had a long time before surrendered it into the hands of the lord of the manor, to the use of another person, his heirs and assigns, for securing the payment of money borrowed; for while the tenant continues in possession, it is his own house.

Rex v. Breeme, Old Bailey, April Session, 1780, on a case reserved, Cases Cro. Law. 195.

† *Sect. 9.* It has also been decided, upon the same reason, that a tenant in possession, under an agreement for a lease for three years, from a person who held under a building lease, is not guilty of arson by burning the house, for it is the injury to the possession which this law means to punish.

Pedley's case, Cases Crown Law, 209.  
S. C. Cald. 218.

† *Sect. 10.* It has also been decided, that a tenant from year to year, or from month to month, cannot be guilty of arson by burning the house of which he is so in possession.

1 Hale, 568,  
569.  
3 Inst. 67.  
Dalt. c. 105.  
Cro. Car. 338.

*Sect. 11.* Also it seems the much stronger opinion, that a man so seised or possessed of a house in a town, who burns his own with an intent to burn his neighbour's, but in the event burns his own only, is not guilty of arson; for by the general tenor of the books speaking of this offence, it seems to be

be supposed to be done in the house of another, and not of the offender. (1)

† Sect. 12. It is however determined, that a widow entitled to dower, but no dower assigned, from a house, the equity of the redemption of which had descended from her husband to her infant children, and for whose benefit she had let it and received the rent, is guilty of arson by burning it in the possession of her tenant.—And it was said, that if she had been seised of the freehold, it would still have been felony; from whence it is contended, that a reversioner who shall maliciously fire the houses in possession of his tenants *under leases* from himself or his ancestors, will be guilty of arson.

Harris' case,  
Foster, 113 to  
116.

† Sect. 13. It has also been determined, that if a pauper admitted into a parish poor-house set fire to the room in which she with other paupers sleep, she is thereby guilty of arson; for this is the house of the parish.

† Sect. 14. So also it has been determined to be arson in a prisoner confined for debt in a county gaol, to set fire to the little box which forms his apartment in the prison.

Rex v. Donovan, 2 Bl. Rep. 682.

Sect. 15. So also, although no act which is only a crime in respect of the injury which it does, or may do, to another, be made felony by reason of an intention thereby to commit a felony, if such intention be not executed; yet if the house set fire to be in a town, this is certainly an offence highly punishable in regard of the malice thereof, and the great danger to the public which attends it, and the offender may be severely fined, and imprisoned during the king's pleasure, and set on the pillory, and bound to his good behaviour during life.

Kelynge, 29.  
Fost. 115, 116.

As to THE THIRD POINT, viz. How much of such house ought to be burnt.

Sect. 16. It seems to be clearly agreed, that neither a bare intention to burn a house, nor even an actual attempt to do it by putting fire to part of a house, will amount to felony, if no part of it be burnt; for the indictment must have the words *incendit et combussit*.

1 Hale, 570.  
Dalt. c. 105.  
3 Inst. 66.  
4 Comm. 222.

Sect. 17. But it is certain, that if any part of the house be burnt, the offender is guilty of felony, notwithstanding the fire afterwards be put out, or go out of itself.

By statute 6 Anne, c. 21. "any servant negligently setting fire to a house or out-houses, shall, on conviction before two justices of the peace, forfeit £100, or be sent to the house of correction for eighteen months."

By 43 Geo. 3. c. 58. s. 4. it is enacted, "That if any person or persons, from and after the 1st of July, 1803, shall, either in England or Ireland, wilfully, maliciously, and unlawfully, set fire to any house, barn, granary, hop oast, malt-house, stables,

(1) But if he set fire to his own house, maliciously intending to fire the house of B. and also thereby do burn the house of B. he is guilty of ar-

son; or if he set fire to his own house in a town, and thereby in fact others be burnt down, he is also guilty of arson. (2 East, 1051. Isaac's case.)

"stables, coach-house, out-house, mill, warehouse, or shop, whether such house, barn, granary, hop oast, malt-house, stable, coach-house, out-house, mill, warehouse, or shop shall then be in the possession of the person or persons so setting fire to the same, or in the possession of any other person or persons, or of any body corporate, with intent thereby to injure or defraud his majesty, or any of his majesty's subjects, or any body corporate, that then and in every such case the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to such offence, shall be and are hereby declared to be felons, and shall suffer death as in cases of felony, without benefit of clergy."

The statute 52 Geo. 3. c. 130. "for the more effectual punishment of persons destroying the properties of his majesty's subjects, and enabling the owners of such properties to recover damages for the injury sustained," recites the passing of the statutes 1 Geo. 1. s. 2. c. 5., 9 Geo. 1. c. 22., 9 Geo. 3. c. 29., 41 Geo. 3. c. 24., and 43 Geo. 3. c. 58. and that it is expedient and necessary that more effectual provisions should be made for the protection of property not within the provisions of the said acts; and enacts, "that every person who shall, from and after the passing of this act, wilfully or maliciously burn or set fire to any buildings, erections, or engines, which shall be used or employed in the carrying on or conducting of any trade or manufactory, or any branch or department of any trade or manufactory of goods, wares, or merchandize of any kind or description whatsoever, or in which any goods, wares, or merchandize shall be warehoused or deposited, shall, upon being lawfully convicted thereof, be adjudged guilty of felony, without benefit of clergy, and shall suffer death as in cases of felony without benefit of clergy."

As to THE FOURTH POINT, *viz.* With what degree of malice such house ought to be burnt.

(a) 1 Hale, 569.  
3 Inst. 67.  
Flew. 173.

*Sect. 18.* It seems clear, that if the fire happened through negligence (a) or mischance, it cannot make him who is the unfortunate cause of it, guilty of arson; for the indictment must allege the offence to have been done *voluntariè, malitiâ suâ præcogitatâ et feloniciè*. Yet if one maliciously intending to burn only the house of A. happen thereby to burn the house of B. it is certain that he may be indicted as having maliciously burned the house of B. for where a felonious design against one man misses its aim, and takes effect upon another, it shall have the like construction as if it had been levelled against him who suffers by it.

As to THE FIFTH POINT, *viz.* In what cases arson is deprived of the benefit of clergy.

† *Sect. 19.* By 4 and 5 Philip and Mary, c. 4. it is enacted, "That all and every person and persons that shall maliciously command, hire, or counsel any person or persons wilfully to burn any dwelling-house, or any part thereof, or any barn then having corn or grain in the same, shall not have the benefit of his or their clergy."

† *Sect.*

† *Sect. 20.* By 9 Geo. 1. c. 22. "If any person or persons shall set fire to any house, barn, or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood; or shall forcibly rescue any person, being lawfully in custody of any officer, or other person, for any of the offences aforesaid; or if any person or persons shall by gift or promise of money, or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act, every such person so offending shall suffer death without benefit of clergy." (2)

† *Sect. 21.* It seems, that accessories after the offence are still entitled to the benefit of clergy. 1 Hale, 573.

(2) There was some difficulty before the passing this statute as to what statutes ousted clergy in cases of arson; but it is not necessary now to go into the question, as those doubts probably suggested the above clause in 9 Geo. 1. which clearly

ousts clergy in cases of arson. The reader, however, who is curious on the point, may consult 11. 11. P. C. sub tit. Arson, (Vol. 1. 572. Vol. 2. 347. 11 Rep. 35. Foster, 330.)

## CHAP. XIX.

### (1) OF SIMPLE LARCENY.

AND now we are come to offences against the goods of another, which are generally called larcenies, from the Latin word *latrocinium*, of which there are two kinds :

#### 1.

(1) Larceny, or the fit, is thus defined by Bracton, the oldest writer who composed a regular treatise upon our laws (for Glanville is much too summary a composition to be called a treatise upon Law.) "*Furtum est, secundum leges, Contractatio rei alienæ fraudulenta, cum animo furandi, in illo illo domino, ejus res illa fuit.*" "*Cum animo dico, quia sine animo furandi non committitur.*" (De Coronat. l. 3. c. 32.) This definition he evidently copied from the Civil Law, for "*Furtum*" is defined by the civilians in almost the same words, except that by the Civil Law taking the mere use of a thing was theft, *Furtum est Contractatio fraudulosa lucri faciendi gratia, vel ipsius rei, vel etiam usus ejus possessionisve.* (Inst. Ins. lib. 4. tit. 1. s. 1.)

Lord Coke, Mr. J. Blackstone, and Mr. East, all define larceny to be a felonious taking, but it is submitted that though this be true in fact, yet it is vicious as a definition. The defining terms of a definition should not themselves want defining; and as to what shall amount to a felonious taking is the very matter of inquiry. Mr. J. Eyre, in the debate on Pear's case, (2 E. P. C. 555.) seems to have expressed himself with more correctness when he described Larceny to "be the wrongful taking of goods with intent to spoil the owner of them, *causa lucri.*"

The definition as given by Mr. East, omitting the word "felonious," may perhaps be correct. He says it is the wrongful or fraudulent taking and carrying away, by any person, of the mere personal goods and chattels of another from any place, with an intent to convert them to his the taker's own use and make them his own property without the consent of the owner."

In order to constitute the crime of larceny or

theft, there must be, 1. "a wrongful taking and carrying away"—2. of the goods and chattels, as distinguished from any thing which in fact or in contemplation of law is part of the freehold and of some value—3. with intent to convert them to the taker's use, or, as the civilians express it, "*lucri causa*," which distinguishes this taking from a taking with a view to destroy them, or merely to deprive the owner of them, which may be from motives of malice; and with a view to malicious mischief to the owner. And lastly, it must be without the owner's consent, (*in illo domino.*)

There is a case, however, existing which falls under none of the definitions of larceny: it was an indictment against two servants for stealing two bushels of beans, the property of John Wimble their master. The jury found as facts that they, by means of a false key, took the beans from the granary and fed their master's horses with them, they choosing to give the horses more than their master allowed, but that they did not take them for their own use or benefit—it is said a majority of the judges held this to be larceny, but upon what principle it is hard to understand.

There are also two recent cases of finding which were held to be larceny. The one occurred before Mr. Justice Lawrence, at the Stafford Assiz. 1804. The prisoner found a pocket-book containing bank notes, on the highway, which he converted to his own use. Lawrence J. is reported to have said, that if a man find property and either knows the owner, or there be any marks upon it to ascertain the owner, and the finder, instead of returning it, converts it to his own use, it is a felonious taking and a larceny.—In the other case, two prisoners had found a bill of exchange which they endeavoured to negotiate.



## 1. Simple Larceny.

## 2. Mixed Larceny.

SIMPLE LARCENY is also of two kinds,

## 1. Grand Larceny.

## 2. Petit Larceny.

Dalt, c. 107.  
1 Hale, 503,  
504.

SIMPLE GRAND LARCENY is a felonious and fraudulent taking and carrying away, by any person, of the mere personal goods of another, not from the person, nor out of his house, above the value of twelve-pence.

For the better explication of which definition, I shall consider the several parts of it; as,

1. What shall be said to be a felonious and fraudulent taking.
2. What shall be said to be a carrying away.
3. By whom the offence may be committed.
4. What are such goods the taking whereof may be felonious.
5. How far such goods ought to belong to another.
6. Of what value they must be.
7. In what cases simple grand larceny is deprived of the benefit of clergy.

As to THE FIRST POINT, *viz.* What shall be said to be a felonious and fraudulent taking.

Kely. 24.  
B. Cor. 45. 48.  
58. 137. 160.  
(a) If a horse  
be stolen, the  
indictment  
should run

*Sect. 1.* It is to be observed, that all felony includes trespass; and that every indictment of larceny must have the words *felonice cepit*, as well as *asportavit* (a); from whence it follows, that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away.

"*cepit et abduxit*;" if a sheep, &c. "*cepit et effugavit*." 1 Hale, 504. C. Cir. Com. 320.

3 Inst. 102.  
1 Hale, 504.

*Sect. 2.* And from this ground it hath been holden, that one who finds such goods as I have lost, (2) and converts them to his

own

gociate. Gills J. is stated to have told the jury that it was the duty of any man who found property to endeavour to discover the owner, and restore it, and not convert it to his own use; that the concealing it and appropriating it to his own use, was the stealing of it.—These cases are from the M. S. notes of Mr. Chetwynd, the learned Editor of Burn, and the rulings, certainly, are of two most eminent judges;—but finding the goods of another and converting them to the use of the finder, is the very principle of the action of trover, and it seems very like converting, the proper subject matter of a civil action into a felony. It is also directly against the dictum of Lord Coke, who says, (3 Inst. c. 34.) "If a man find goods and conceal or deny them it is no felony."

(2) With respect to finding goods, 't must be *bona fide* finding and the owner not known, as, when a gentleman left his trunk in a hackney coach, and the coachman took and converted it to his own use, it was held felony, for he must have known

where he took up the gentleman and his trunk and where he set him down, and therefore he ought to have restored it to him. A similar circumstance occurred again at the Old Bailey, in 1786. Wynne, who was a hackney coachman, had taken up the prosecutor with several packages at the Adelphi and set him down in Orchard Street, when the prisoner and a servant took all the things out of the coach, except a small corded box in the seat, which contained several articles; for the stealing of which, and of the box itself, the prisoner was indicted. The prisoner being discharged, drove off, and soon after the box was missed. In a few days the prisoner was traced and taken, and the box found, in consequence of a direction from him, at a Jew's, unrecorded, and part of the goods only in it; particularly several papers were missing, and among them two books mentioned in the indictment. The jury were of opinion, under the circumstances that the coachman unrecorded the box and destroyed the papers with an intent to embezzle the goods found in

own use, *animo furandi*, is no felon; and *à fortiori*, therefore, it must follow, that one who has the actual possession of my goods by my delivery for a special purpose, as a carrier who receives them in order to carry them to a certain place; or a tailor who has them in order to make me a suit of clothes; or a friend who is intrusted with them to keep for my use; cannot be said to steal them, by embezzling of them afterwards.

*Sect. 3.* And herein our law differs from the civil, which, agreeably to the *Mosaical law*, having no capital punishment for *bare* thefts, deals with offences of this kind as such, as in strict justice most certainly it may; but our law, which punishes all theft with death if the thing stolen be above the value of twelve-pence, and with corporal punishment if under, rather chooses to deal with them as civil than criminal offences, perhaps for this reason in the above-mentioned case, concerning goods lost, because the party is not much aggrieved where nothing is taken but what he had lost before; and for this cause in the other cases, concerning the embezzling of goods delivered to another by the owner, because the party being intrusted with the whole possession, it may be presumed that both the offender and his offence are known, and consequently the person injured is supposed to have a remedy by action against him; from which consideration some have made it part of the definition of larceny, that it be committed *without the knowledge of the owner*; and it seems rigorous to have recourse to severe laws, where, probably, more gentle ones will be effectual.

There is also a constructive taking of the whole in the law, even where the thing has been delivered by the owner himself, first, for a special purpose, and 2. where he has been beguiled into a delivery of it, not intending to part with the absolute property in it. In which cases the law presumes it still to remain in his possession. See *post*, *Pear's case*; *Temple's case*, and other following cases.

*Sect. 4.* And agreeably hereto it has been resolved, that even those who have the possession of goods by the delivery of the party, may be guilty of felony by taking away part thereof, with an intent to steal it; as if a carrier open a pack and take out part of the goods; or a weaver who has received silk to work; or a miller who has corn to grind, take out part with an intent to steal it; in which cases it may not only be said that such possession of a part distinct from the whole was gained by wrong, and not delivered by the owner, but also that it was obtained basely, fraudulently, and clandestinely, in hopes to prevent its being discovered at all, or fixed upon any one when discovered.

*Sect. 6.* Also it seems generally agreed, that one who has the *bare*

in the box; and found him guilty. And in *Easter Term, 1786*, a majority of the judges held the conviction proper, (2 East, 664.) If, as it is clear it ought, every taking to constitute a larceny must include a trespass, these cases seem to go to the extreme point. It is difficult to say, that a man is a trespasser, because the owner leaves a thing with him. In the latter case, however, it may be said that the prisoner knowing the owner and where he was to be found, the taking the goods out of the coach,

with an intent to convert them to his own use, was a trespass. The policy of the decision cannot be doubted, but in matters of law judges ought never to depart from the rigid rule of law. It is their province "*jus dicere*," not "*jus dare*;" and if the convenience or inconvenience resulting from construction of law, is to be admitted as a valid argument, it will leave a latitude of construction ultimately productive of more evil than good. See Note 1.

13 Ed. 4. 9, 10.  
S. P. C. 25.

S. P. C. 25.  
See Exod. xiii.

Dalt. c. 101.  
Bract. l. 3. 150.  
Fleta, l. 1. 36.  
2 Hale, 290.

1 Hale, 505.  
13 E. 4. 9, 10.  
S. P. C. 25.  
Dalt. c. 102.  
Kely. 33.  
1 R. Abr. 73.

3 H. 7. 12.

21 H. 7: 14.  
B. Cor. 58. 137.  
S. P. C. 25.  
Dalt. c. 102.  
Moor, 246.  
Pop. 84.  
1 Hale, 505  
667.

*bare charge*, (3) or the *special use* of goods, but not the *possession* of them; as a shepherd who looks after my sheep, or a butler who takes care of my plate, or a servant who keeps the key to my chamber, or a guest who has a piece of plate set before him in an inn, may be guilty of felony, in fraudulently taking away the same; for in all these cases the offence may as properly come under the word "*cepit*;" the injury to the owner is as great, and the fraud as secret, and the villainy more base, than if it had been done by a stranger.

Rex v. Murray,  
Old Bailey,  
October Session,  
1784.

† *Sect. 7.* So also, if the clerk to a banker or merchant have the care of money, or if he have access to it for special and particular purposes, and is sent to the bag or drawer for money, for the purpose of paying a bill, or if he is sent for the purpose of bringing money generally out of that bag or drawer, and, at the time he brings that money, he clandestinely and secretly takes out other money for his own use, he is as much guilty of a felony as if he had had no care of the money, or access to the bag or drawer whatsoever.

Tatum's Case,  
O. B. May  
Session, 1785.  
But see post.  
Ch. 43. page 327, sect. 10.

† *Sect. 8.* So also where a person being left in an apartment, pawns the furniture or other property under his care, with a felonious design to steal it, it is felony.

Bass's Case,  
Cases in Cro.  
Law, 215.

† *Sect. 9.* And, in general, where the delivery of the property is made for a certain, special, and particular purpose, the possession is still supposed to reside, unparted with, in the first proprietor. Therefore, where a master delivers goods to his servant to carry to a customer, but instead of so doing he converts them, on his way, to his own use, it is a felonious taking; for the master had a right to countermand the delivery of them, and therefore the possession remained in him at the time of the conversion.

(a) O. B. 1779,  
No. 83.  
(b) O. B. 1758,  
No. 18.  
(c) O. B. 1779,  
No. 83.  
(d) Ann Atkin-  
son's Case,  
Cases Cro.  
Law, 247.  
notis.

† *Sect. 10.* So also, if a watchmaker steal a watch delivered to him to clean: (a) or if one steal clothes delivered for the purpose of being washed; (b) or goods in a chest delivered with the key for safe custody; (c) or guineas delivered for the purpose of being changed into half-guineas; (d) or a watch delivered for the purpose of being pawned: (e) in all these instances, the goods taken have been thought to remain in the possession of the proprietor, and the taking of them away held to be felony.

(e) Cases Cro. Law. 320.

### Sect.

(3) A man cannot be said to take that of which he is already in possession. Lord Coke, therefore, makes a distinction between a *possession* and a *bare charge*: "There is," says he, "a diversity between a possession and a charge; for when I deliver goods to a man, he hath the possession of the goods, and may have an action of trespass if they be taken or stolen out of his possession. But my butler or cook that in my house hath charge of my vessels or plate, hath no possession of them, nor shall have any action of trespass as the bailee shall; and therefore if they steal the plate, &c. it is larceny. And so it is of a shepherd; for these things

be in *onere et non in possessione promi, coci, pastoris, &c.*" "So if a taverner set a piece of plate before his guest to drink in it, and he carry it away, it is larceny; for it is no bailment." With respect to cases of possession, he states the distinction between those who gain possession *animo furandi* and such as do not. The intent to steal, he says, must be when the thing comes to his hands or possession; for if he hath possession of it once lawfully, though he hath the *animus furandi afterwards* and carrieth it away, it is no larceny. (3 Inst. 47. 107.)

*Sect. 11.* Also it seems clear, that if a carrier, after he has brought the goods to the place appointed, take them away again secretly, *animo furandi*, he is guilty of felony; because the possession which he received from the owner being determined, his second taking is in all respects the same as if he were a mere stranger.

3 Inst. 107.  
B. Cor. 160.  
S. P. C. 25.  
1 Hale, 505.

*Sect. 12.* And not only he who first lays his hands on my goods himself, but in many cases he who receives them from another, may be guilty of feloniously taking them; as if a person intending to steal my horse, take out a *replevin*, and thereby have the horse delivered to him by the sheriff; or if one, intending to rifle my goods, get possession from the sheriff, by virtue of a judgment obtained, without any the least colour or title, upon false affidavits, &c. in which cases the making use of legal process is so far from extenuating that it highly aggravates the offence, by the abuse put on the law, in making it serve the purposes of oppression and injustice.

1 Hale, 507.  
3 Inst. 108.  
Kely. 43.  
1 Sid. 254.  
Raym. 276.

*Sect. 13.* Also he who steals my goods from *J. S.* who had stolen them before, may be indicted, or appealed, as having stolen them from me, because in judgment of law *the possession* as well as *the property* always continued in me.

13 E. 4. 3.  
S. P. C. 61. 182.  
B. App. 81.  
100.  
B. Coron. 71.

† *Sect. 14.* And it seems, that where the property is obtained with a *preconcerted design to steal it*, the possession is supposed to continue with the true owner, whatever may be the means or the pretence under which the property is obtained.

† *Sect. 15.* Therefore where a person goes into a shop under pretence of buying goods, (*f*) and they are delivered to him to look at, and he then runs away with them; or where a person goes into a market and obtains a horse for the purpose of trying its paces, (*g*) and rides away with it; it is felony.

(*f*) Raym. 276.

(*g*) Kely.

† *Sect. 16.* So also if a person hire a horse of a livery-stable-keeper, to go to a particular place, and promise to return in the evening of the same day, but instead of so doing, immediately sells the horse, and converts the money to his own use, it is felony.

Case of John Pears, Old Bailey, Sept. Sess. 1779, Cases C. L. 189.

† *Sect. 17.* So also where a person hired a post-chaise for three weeks or a month, to go a tour round the North, for the use of which it was agreed that he should pay at the rate of five shillings a day during the time that he kept it; and that, on his return, if he chose to keep it, the price was fifty guineas, and he went away with it, and never returned it, it was determined to be larceny.

Major Semple's Case, Old Bailey, July Sess. 1786. Cases C. L. 327.

† *Sect. 18.* So where a person left a note at a hosier's shop, desiring that he would send some silk stockings to his lodgings to look at, and looked out three pair, and went away with them while the hosier, by his desire, went home to fetch other goods, he was adjudged guilty of larceny.

Sharpless and Greatrex's Case, Old Bailey, May Sess. 1772. Cases C. L. 88.

† *Sect. 19.* So where *A.* obtained a bill of exchange from *B.* under a pretence of discounting it, but instead of so doing converted it to his own use.

Aickle's Cases d Law, 23

Rex v. Patch,  
Cases C. L.  
206.

† *Sect. 20.* So also to obtain the delivery of money with a design feloniously to take it away, under the false pretence of having found a diamond ring of great value, or, as it is called, by the practice of *ring-dropping*, has been determined to be a taking from the possession of the owner.

Rex v. Horner,  
Cald. Rep. 295.

† *Sect. 21.* So also where the prisoner decoyed the prosecutor into a public-house, and introduced the play of cutting cards, and then, under pretence of having won, swept the prosecutor's money into his hand, and ran away with it.

Wilkins's Case,  
Old Bailey,  
April Sess.  
1789, on a case  
reserved.

† *Sect. 22.* So where a tradesman delivered a parcel of goods to his servant to carry to a customer, and the prisoner contrived to meet the servant on his way, and on pretence that he was going, by the desire of the customer, to the master's shop, to fetch this parcel in lieu of another, obtained the delivery of it, by exchanging it for a parcel of old rags of no value, which he had purposely with him, it was determined to be a felonious taking of the property from the possession of the master.

(a) Charlewood's Case,  
Cases C. L.  
317.  
(b) Pepper's  
Case, O. B.  
Oct. Sess. 1793.  
(c) Rex v.  
Nicholson,  
Jones, and  
Chapple, O. B.  
Jan. Sess. 1794,  
*coram* MACDONALD, Chief Baron, present GROSE and ROOKE, Justices.

† *Sect. 23.* But if it appear that the horse, chaise, or other property was fairly and *bona fide* hired, (a) or that the goods were really sold, and a credit given to the party, (b) or that the person actually played at cards on his own account, and lost the money, (c) the property in such cases is changed, and the possession of it out of the first owner, and therefore the fraudulent conversion of it afterwards cannot be felony; for to constitute larceny, the felonious design must exist at the time the property is obtained. (4)

See the case of  
Rex v. Meers,  
1 Show. 50.  
where in Tri-  
nity Term, 1  
Will. and Mary,  
this question  
was argued on  
a special ver-  
dict, and deter-  
mined to be no  
felony.  
Kely. 24. 81.  
Show. 57.

*Sect. 24.* It seems not to have been clearly settled at common law, whether a lodger who stole the furniture of his lodgings, were indictable as a felon, inasmuch as he had a kind of special property in the goods, and was to pay the greater rent in consideration of them; but if it had appeared clearly, from the whole circumstances of the case, that the first intention of the party in coming to the house was not to have the convenience of lodging in it, but only, under the colour thereof, to have the better opportunity of rifling it, and to elude the justice of the law, by endeavouring to keep out of the letter of it, by gaining a possession of the goods with the consent of the owner, I cannot see any good reason why such a person should not be esteemed as much a felon as a mere stranger, inasmuch as his whole design was to defraud the law, and the consent of the owner was grounded on a supposition of his coming as a lodger, and could never have been gained if the truth had appeared, which the party shall get no advantage by falsifying; and it brings a contempt upon the justice of the nation to suffer its laws to be evaded by such little contrivances.

(4) The result and principle of these cases when a delivery is obtained by fraud is this; that when the delivery is obtained from the owner by fraud and falsehood, with an intent at the time to steal the article delivered, it is a felony, and the delivery in fact by the owner's will not pass the legal

possession. But if a credit was given by the owner, and he intended to part with his goods absolutely, and not merely the possession, then it is not a felony, although the person receiving them intended never to pay for or return them.

contrivances. However, this question is now settled by the statute 3 and 4 Will. and Mary, c. 9.

As to THE SECOND POINT, *viz.* What shall be said to be such a carrying away of the thing stolen, as will bring the case within the word *asportavit*.

*Sect. 25.* The word "*asportavit*" is necessary in every indictment of larceny; and it seems, that any the least removing (5) of the thing taken from the place where it was before, is sufficient for this purpose, though it be not quite carried off; and upon this ground the guest, who, having taken off the sheets from his bed with an intent to steal them, carried them into the hall, and was apprehended before he could get them out of the house, was adjudged guilty of larceny.

3 Inst. 108.  
2 Vent. 215.  
7 Ass. 39.  
S. P. C. 26.  
B. Cor. 107.  
3 Inst. 109.  
1 Hale, 508.  
Dalis. 21.  
Crom. 36.

*Sect. 26.* So also was he who having taken a horse in a close with an intent to steal him, was apprehended before he could get him out of the close.

Dalt. p. 501.  
Kely. 31.

*Sect. 27.* Neither is he less guilty who pulls off the wool from another's sheep, or (a) strips their skins, with an intent to steal them.

(a) See Martin's Case,  
Cases C. L.  
2d edit. 158.

*Sect. 28.* So also is he who intending to steal plate, takes it out of a trunk wherein it was, and lays it on the floor, and is surprised before he can carry it off.

Kely. 31.  
1 Hale, 508.

† *Sect. 29.* So also where a man, with a felonious intention, had removed goods from the head to the tail of a waggon, it was held a sufficient removal to constitute a carrying away.

Coslet's Case,  
Cases C. L.  
204.

† *Sect. 30.* So also where a diamond ear-ring was snatched from a lady's ear, but lodged in the curls of her hair, it was held to be a sufficient asportation, although it was not taken away by the thief.

Lapier's Case,  
Cases C. L.  
264.

† *Sect. 31.* But where a man was indicted for stealing the contents of a bale of goods in a waggon, and it appeared that the bale lay horizontally, and that he had set it on its end, but had not removed it from the spot, it was held, upon a case reserved, not to be a sufficient carrying away.

Cases C. L.  
204. *notis.*

As to THE THIRD POINT, *viz.* By whom larceny may be committed. (6)

*Sect. 32.* It is certain, that a *feme covert* may be guilty thereof by stealing the goods of a stranger, but not by stealing her husband's, because a husband and wife are considered as one person in law; and the husband, by endowing his wife at the marriage with all his worldly goods, gives her a kind of interest in them; for which cause, even a stranger cannot commit larceny in taking the goods of the husband by the delivery of his wife; as he

1 Hale, 514.  
637, 638.  
Pult. 127.  
B. Cor. 14. 77.  
Dalt. c. 104.  
13 Ass. 5.  
18 Ed. 5. 32.  
S. P. C. 94.  
Crom. 35.

may

(5) The civil law and the law of England agree on this point, "*Quum ergo furtum sit contractatio, i. e. rei motio a loco,*" Heinec. Elem. Jur. § 1041.

(6) Joint tenant or tenant in common of a chattel cannot be guilty of stealing the same from each other, for the property and possession is both. (1 Hale, 513.)

may by taking away the wife by force and against her will, together with the goods of the husband. (7)

Grotius de  
Jure, b. 2.  
c. 2. s. 6, 7.  
Puffend. b. 2.  
c. 6.  
Britton, c. 10.  
Mirr. c. 4.  
1 Hale, 51. 565.  
4 Comm. 31.

*Sect. 33.* It is said to be no felony for one reduced to extreme necessity, to take so much of another's victuals as will save him from starving; but if such his necessity be owing to his unthriftiness, surely it is far from being any excuse. † And this seems to be an unwarranted doctrine, borrowed from the notions of some civilians; at least it is now antiquated, the law of England admitting no such excuse at present. But a judge ought to be tender in these cases, and use much discretion and moderation.

As to THE FOURTH POINT, *viz.* What are such goods, (8) the stealing whereof may amount to felony.

1 Hale, 509.  
1 Mod. 89.  
Allen, 83.  
1 Vent. 137.  
S. P. C. 25.  
Strange, 1137.  
2 Comm. 16.

*Sect. 34. FIRST,* They ought to be no way *annexed to the freehold*. And therefore it is no larceny, but a bare trespass, to steal corn or grass, growing, or apples on a tree, or lead on a church or house; but it is larceny to take them being severed from the freehold, whether by the owner, or even by the thief himself, if he sever them at one time, and then come again at another time and take them.—And the general reason of this distinction between chattels fixed to a freehold and those lying loose, perhaps may be this; because the former, not being to be removed without trouble and difficulty, are not so liable to be stolen, and therefore need not to be secured by so severe laws as the other require. † But many of the descriptions of property which come within this notion of an adherence to the freehold, being thereby placed in a situation extremely precarious and unprotected, the legislature has from time to time imposed various penalties upon the stealing of them; which will be fully considered in a subsequent part of this chapter.

Strange, 1133.  
Sess. Cas. 378.  
3 Inst. 109.

B. Cor. 135.  
S. P. C. 25.  
Crom. 27.  
8 Rep. 33.  
4 Comm. 234.

*Sect. 35. SECONDLY,* They ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen, as paper or parchment on which are written assurances concerning lands, or obligations, or covenants, or other securities for a debt or other *choses in action*. And the reason wherefore there can be no felony in taking away any such thing seems to be, because, generally speaking, they being of no manner of use to any one but the owner, are not supposed to be so much in danger of being stolen, and therefore need not to be provided for in so strict a manner as those things which are of a known price, and every body's

(7) If a wife commit larceny in the company of her husband, both of them may be indicted, and if the husband be convicted the wife shall be acquitted. But if the husband be acquitted, and it appear that the felony was her own voluntary act, (by which must be understood that the husband if present had no knowledge of or participation in the fact,) she may, upon the same indictment, be convicted, for the charge is joint and several. And if a woman insist that she is the wife of the man in whose company the felony was done, she may be indicted by her husband's name and her own with an alias and the addition of spinster, and it will lie

upon her to prove her coverture, or else she may be found guilty. (2 East, p. 560.)

(8) There can be no property in the human body, either living or dead. In the case of *Dr. Handasyde*, trover was brought against him for a *usus naturæ*, the bodies of two children which grew together. Lord Chan. Willes held the action would not lie, as no person had any property in corpses. It is usual, however, to indict those who steal dead bodies, as offenders against public decency. A late statute has also passed, 54 Geo. 3. c. 101. making it felony to steal any child under 10 years of age. *Vide ante*, p. 128. the statute.

body's money; and for the like reason it is no felony to take away a villein, or an infant in ward, &c.

*Sect. 36.* THIRDLY, They ought not to be things of a base nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like, which, howsoever they may be valued by the owner, shall never be so highly regarded by the law, that for their sakes a man shall die; as he may for stealing a hawk, known to him to be reclaimed, not only by force of the statute of 37 Ed. 3. c. 19. but also at common law, in respect of that very high value which was formerly set upon that bird.

3 Inst. 102.  
7 Co. 13.  
3 H. 8. 3.  
Crom. 36.  
Dalt. c. 103.  
1 Hale, 512.  
2 Comm. 393.

† *Sect. 37.* But by the 10 Geo. 3. c. 18. stealing any dog or dogs of any kind or sort whatsoever from the owner thereof, or from any person entrusted by the owner therewith, or knowingly selling, buying, receiving, harbouring, keeping, or detaining any such dog or dogs, is a misdemeanor.

As to the FIFTH POINT, viz. How far the goods taken away ought to belong to another.

*Sect. 38.* It seems agreed, that the taking of goods whereof no one had a property at the time, cannot be felony; and therefore, that he who takes away *treasure-trove*, or a wreck, waif, or stray, before they have been seized by the persons who have a right thereto, is not guilty of felony, and shall be only punished by fine, &c.

1 Hale, 512.  
B. Cor. 190.  
22 Ass. 99.  
3 Inst. 108.  
S. P. C. 25.

*Sect. 39.* Neither shall he who takes a fish in a river or other great water, wherein they are at their natural liberty, be guilty of felony, as he may be who takes them out of a trunk or pond, &c.

*Sect. 40.* Upon the like ground it seems clear, that a man cannot commit a felony by taking deer, hares, or conies, in a forest, chase, or warren, or old pigeons being out of the house, &c.

Vide post, in this chapter.

*Sect. 41.* But it is agreed, that one may commit larceny in taking such or any other creatures *feræ naturæ*, if they be fit for food, and reduced to tameness, and known by him to be so; and it seems the most plausible opinion, that it is felony to steal wild pigeons in a dove-house shut up, or hares or deer in a house, or even in a park, inclosed in such a manner that the owner may take them whenever he pleases, without the least danger of their escaping, in which case they are as much in his power as fish in a pond, or young pigeons, or hawks in a nest, &c. in taking of which, for the like reason, it seems to be agreed that felony may be committed.

7 Co. 13.  
22 Ass. 95.  
22 H. 6. 59.  
18 Ed. 4. 8.  
B. Cor. 92. 155.  
164.  
S. P. C. 25.  
3 Inst. 109.  
18 H. 8. 2.  
Dalt. c. 92.

*Sect. 42.* Also it seems clear, that one may commit felony by taking away swans marked or pinioned, or those which are unmarked, if they be kept in a pond or private river; neither do I see why it is not as much felony to steal the eggs of such swans or hawks, as it is to steal their young ones, unless it be because 11 Hen. 7. c. 17. has appointed a less punishment for this offence.

1 Hale, 511.  
7 Co. 17. 18.  
Dalt. c. 103.  
3 Inst. 98. 109.  
By 31 Hen 8. c. 12. it is felony to take hawks' eggs out of any nests in the

king's lands. This is repealed by the general words of 1 Mary, c. 1.

*Sect. 43.* However, there is no doubt but that the taking of domestic beasts, as horses, mares, colts, &c. or of any creatures



tures whatsoever, which are *domitæ naturæ*, and fit for food, as ducks, hens, geese, turkeys, peacocks, or their eggs, or young ones, may be felony.

2 Hale, 290.  
S. P. C. 25. 96.  
Dyer, 99.  
Dalt. c. 103.

*Sect. 44.* Also it is said, that there may be felony in taking goods the owner whereof is unknown, in which case the king shall have the goods, and the offender shall be indicted for taking *bona cuiusdam hominis ignoti*.

7 Ed. 4. 14. 15.  
3 Inst. 110.  
B. Indict. 33.  
C. Eliz. 145.  
179.  
1 Hale, 512.

*Sect. 45.* And it seems, that in some cases the law will rather feign a property, where in strictness there is none, than suffer an offender to escape; and therefore it is said, that he who takes away the goods of a chapel, or abbey, in time of vacation, may be indicted, in the first case, for stealing *bona capelle*, being in the custody of such and such; and in the second, for stealing *bona domus vel ecclesiæ*, &c.; and *à fortiori*, therefore, it follows, that he who steals goods belonging to a parish-church, may be indicted for stealing *bona parochianorum*.

*Sect. 46.* And it hath been adjudged, that he who takes off a shroud (*b*) from a dead corpse, may be indicted as having stolen it from him who was the owner thereof when it was put on; for it is said, 2 Hale, a dead man can have no property.  
290. and 8 Mod. 249. that a property must be proved in somebody at the trial, or it shall be presumed in the prisoner, from his plea of not guilty.

*Sect. 47.* And there is a special case wherein it is said, that a man may commit larceny by the taking of things whereof the absolute property is in himself; as if *A.* (*c*) deliver goods to *B.* being a tailor, or carrier, &c. and afterwards, with an intent to make him answer for them, fraudulently and secretly take them away; for *B.* had a special kind of property in the goods so delivered to him, in respect whereof, if a stranger (*d*) had stolen them, he might have been indicted generally as having stolen *B.*'s goods, and the injury is altogether as great, and the fraud as base, where they are taken away by the very owner.

As to THE SIXTH POINT, *viz.* Of what value the goods stolen must be.

*Sect. 48.* If they be but of the value of twelve pence, or under, the offence can be but petit larceny.  
22 Ass. 39.  
B. Cor. 84. 85.  
S. P. C. 24. 2 Roll. 78. Dalt. c. 101. 2 Inst. 189. Kely. 68. 4 Com. 238.

*Sect. 49.* Yet if two persons, or more, together, steal goods above the value of twelve pence, every one of them is guilty of grand larceny, for each person is as much an offender as if he had been alone.  
S. P. C. 24.  
Dalt. c. 101.  
Crom. 36.

*Sect. 50.* Also it seems the current opinion of all the *old books*, that if one at several times steal several parcels of goods, each under the value of twelve pence, but amounting in the whole to more, from the same person, and be found guilty thereof on the same indictment, he shall have judgment of death, as for grand larceny.  
S. P. C. 24.  
1 Hale, 531.  
Crom. 36.  
Dalt. c. 101.  
2 Keb. 719.

† *Sect. 51.* But the severity of this rule of law is now obsolete; and it seems to be settled, that the value of the property stolen must not only be, in the whole, of such an amount as the law

Petrie's Case,  
Cases in Cro.  
Law, 239.

law requires to constitute grand larceny, but that the stealing must be to that amount at one and the same particular time ; for things stolen at different times are, in fact, different acts of stealing ; and no number of petit larcenies will amount to a grand larceny, nor any number of grand larcenies, where it depends on the value of the property stolen, to a capital offence.

See also 1 Hale, 530.

As to THE SEVENTH POINT, viz. Where the offence of larceny may be tried.

*Sect. 52.* It is certain, that he who steals my goods in the county of *B.* and carries them to the county of *C.* may be indicted or appealed in the county of *C.* as well as that of *B.* ; because the possession still continuing in me, every moment's continuance of the trespass is as much a wrong, and may come under the word *rept* as much as the first taking ; yet a pirate carrying the goods whereof he robbed me at sea into any county, cannot be indicted for felony there, because the original taking was not such a felony whereof the common law takes cognizance.

13 Edw. 4. 3.  
S. P. C. 61. 182.  
B. App. 84.  
B. Cor. 71.  
1 Hale, 507.  
3 Inst. 113.

† *Sect. 53.* By 13 Geo. 3. c. 31. s. 4. it is recited, “ that whereas “ it frequently happens in both parts of the united kingdom, that “ persons having stolen, or otherwise feloniously taken away “ money, cattle, goods, or other effects, carry the same into “ the other part of the united kingdom, and there have the said “ money, cattle, goods, or other effects, in their possession or “ custody ; and doubts have been entertained, whether they could “ be indicted and tried in that part of the united kingdom, as the “ original offence was not there committed ;” and enacted, “ That “ if any person or persons having stolen, or otherwise feloniously “ taken money, cattle, goods, or other effects, in either part of “ the united kingdom, shall afterwards have the same money, “ cattle, goods, or other effects, or any part thereof, in his, her, “ or their possession or custody, in the other part of the united “ kingdom, it shall and may be lawful to indict, try, and punish “ such person or persons for theft or larceny in that part of the “ united kingdom where he, she, or they shall so have such “ money, cattle, goods, or other effects, in his, her, or their possession or custody, as if the said money, cattle, goods, or other “ effects, had been stolen in that part of the united kingdom.”

Persons who shall have stolen money, &c. in either part of the united kingdom, may be indicted for theft.

† *Sect. 54.* By 13 Geo. 3. c. 31. s. 5. it is further enacted, “ That if any person or persons, in either part of the united “ kingdom, shall hereafter receive or have any money, cattle, “ goods, or other effects, stolen, or otherwise feloniously taken, “ in the other part of the united kingdom, knowing the same to “ be stolen, or otherwise feloniously taken, every such person or “ persons shall be liable to be indicted, tried, and punished for “ such offence in that part of the united kingdom where he, she, “ or they shall so receive or have the said money, cattle, goods, “ or other effects, in the same manner, to all intents and purposes, as if the said money, cattle, goods, or other effects, had “ been originally stolen, or otherwise feloniously taken, in that “ part of the united kingdom.”

Receivers of money, &c. in either part of the united kingdom, knowing the same to be stolen, also liable to be punished.

*Petit*

*Petit Larceny.*

1 Hale, 503,  
Foster, 73.

*Sect. 1.* And now we are come to PETIT LARCENY, which seems to agree with grand larceny in all the particulars above-mentioned, except only the value of the goods; so that wherever an offence would amount to grand larceny, if the thing stolen were above the value of twelve-pence, it is petit larceny if it be but of that value, or under.

Bro. Cor. 84.  
184.

S. P. C. 24.

Dalt. c. 101.

Crompt. 36. Heley, 66.

*Sect. 2.* And if one be indicted for stealing goods to the value of ten shillings, and the jury find specially that he is *guilty*, but that the goods are worth but *ten-pence*, he shall not have judgment of death, but only as for petit larceny.

Case of Abraham Evans,  
Foster, 73.

† *Sect. 3.* And there are no accessaries in petit larceny; and therefore, if two be indicted, one for privately stealing from the person a handkerchief to the value of *twelve-pence*, and the other for receiving it, and the principal be found guilty to the value of *ten-pence* only, the accessary ought to be discharged. So if the principal be charged with grand larceny, and the jury find the value to be only *ten-pence*, the accessary ought to be discharged.

Bro. Cor. 2.  
219.

1 Hale, 530.

3 Inst. 228.

S. P. C. 24.

*Sect. 4.* It seems that all petit larceny is *felony*, and consequently requires the word *felonice* in an indictment for it. Yet it is certain, that it is not punished with the loss of life or lands, but only with the forfeiture of goods and chattels, and whipping, or other corporal punishment.

† *Sect. 5.* But it is enacted by 4 Geo. 1. c. 11. and 6 Geo. 1. c. 23. "That where any person or persons shall be convicted of "grand or petit larceny, &c. who by the law shall be intitled "to the benefit of clergy, and liable only to the penalties of "burning in the hand or whipping, it shall and may be lawful for "the court before whom they are convicted, or any court held at "the same, or any other place, with the like authority, if they "think fit, to order such offenders to be transported for the "space of seven years."

† *Sect. 6.* And at the common law, a conviction of petit larceny prevented the party from giving evidence as a witness in any court of justice; but by the 31 Geo. 3. c. 35. it is enacted, "That "no person shall be an incompetent witness by reason of a conviction for petit larceny."

Under what circumstances larceny is excluded the benefit of clergy will be noted hereafter, and more particularly in the chapter concerning Clergy.

We have seen that every larceny must include a trespass (p. 142.) and therefore at common law, where a person or persons was in *legal possession* of a chattel, and fraudulently converted it to his own use, it did not amount to a larceny, but was a mere embezzlement and breach of trust. Thus lodgers, servants, and clerks, who held *legal possession* of certain articles, on account of others, were not guilty of larceny by fraudulently embezzling them. To remedy these defects a variety of statutes have been passed, many of them since Hawkins wrote, not only making persons liable who were

were not so at common law, but also extending a new sanction to many things which were not the objects of larceny at common law. It has not been judged expedient to break into the original text of the author, but to insert them as follows:—

1. By whom larceny may be committed, not being responsible at common law;—viz.

Lodgers, servants, clerks, agents.

2. Of what things, not being subjects of larceny at common law;—viz.

As being part of the freehold.

As being of no intrinsic value.

Of things in which none had a determinate property, and herein of animals *feræ naturæ*.—Lastly, of certain chattels placed under peculiar sanction of the legislature, either in respect of themselves, or of the place from whence they are stolen.

#### *Larceny from Lodgings by the Lodgers.*

† Sect. 1. By 3 Will. and Mary, c. 9. s. 5. IT IS RECITED to be a frequent practice for idle and disorderly persons to hire lodgings with intent to have an opportunity to take away, embezzle, or purloin the goods and furniture being in such lodgings; AND ENACTED, “that if any person or persons shall take away, “with intent to steal, embezzle, or purloin, any chattel, bedding, “or furniture, which, by contract or agreement, he or they are “to use, or shall be let to him or them to use in or with “such lodging, such taking, embezzling, or purloining shall be, “to all intents and purposes, taken, reputed, and adjudged to “be larceny and felony, and the offender shall suffer as in case “of felony.”

† Sect. 2. It was long doubted whether, as a lodger had a special property in the goods which were let with the lodgings, the stealing of them was felony (a); but it was at length decided, that this was not a common law offence (b), and in consequence of this decision, the above statute was made (c); it has therefore been determined, that if the indictment omit to conclude *contra formam statuti* (d), or if it so conclude, but appear to be a larceny not within the statute (e), it cannot be made good as an indictment at common law.

(a) Kely. 24. 81.  
Ante, page 146.  
(b) Rex v.  
Mears, 1 Show.  
50. (c) 1 Show.  
55. (d) Joss-  
ling's case, O.B.  
July Sess. 1784.  
(e) Ann Falk-  
land's case, O.  
B. Sept. Sess.  
1788.

† Sect. 3. It hath been ruled, that a ready-furnished house, the whole of which is let, and no part of it reserved to the lessor, is the mansion-house, and not the lodging of the lessee, within the meaning of this statute.

Brown's case,  
O. B. Sept.  
Sess. 1789.

† Sect. 4. It hath also been determined, that if lodgings be let to a married woman during co-habitation with her husband, and the husband afterwards assents to the contract, the indictment must state that the lodgings were let to *the husband*, for if it state that they were let to *the wife*, it is erroneous.

Sarah Pike's  
case, O. B. Feb.  
Sess. 1784, cor-  
ram GOULD,  
Justice.

Sect.

Eliz. May's  
case, O. B.  
Sept. Sess.  
1784, *coram*  
HORNAM,  
Baron.

† *Sect. 5.* So also it seems that a wife cannot be indicted for stealing goods from a lodging stated to have been let by contract to her husband, if it appear in evidence, that the husband cohabited with her at the time the felony was committed, for she is in such case under his coercion, and it shall be presumed to have been done by his command or consent.

Case of Ambrose Mann,  
O. B. July  
Sess. 1786,  
*coram* ASH-  
MURST, Justice.

† *Sect. 6.* But if the indictment state the lodgings as let to the husband, and it appear upon the evidence, that the lodgings were in fact let to the wife; that the husband seldom came, and never slept there; that the wife lived entirely upon her own labour; that the goods were pawned by her servant; and that at the time they were pawned, the husband was at a distance in the country; the wife may be found guilty: for here it cannot be presumed that she acted under his coercion.

Sarah Bill's  
case, O. B.  
May Sess.  
1751.

† *Sect. 7.* It has also been decided, that if the lodgings are let to two persons, as to a mother and to her widowed daughter, the indictment must state the joint contract.

Butler's case,  
O. B. Feb. Sess.  
1784.

† *Sect. 8.* It has also been ruled, that if it appear upon the evidence, that the felony was committed after the term for which the contract was made, had expired, the prisoner must be acquitted.

Ann Pope's  
case, July Sess.  
1784.

† *Sect. 9.* It is also said, that it is indispensably necessary in an indictment on this statute, to state the name of the landlord, or person by whom the lodgings were let.

The case of  
William Patum,  
O. B. May  
Sess. 1785, *coram*  
ADAIR,  
Recorder.

(9) † *Sect. 10.* It has also been said, that the mere act of pawning the furniture let with a lodging is hardly sufficient evidence against the lodger of his intention to convert them feloniously to his own use, if it appear that he had been in the habit of so doing, for the purpose of supplying a temporary necessity, and of restoring the goods to the lodgings at a subsequent time; for that the statute 30 Geo. 2. c. 24. s. 3. (a) enacts, "That if any person shall pawn the goods of another without his consent, he shall, on conviction, on the oath of one witness before one magistrate, forfeit twenty shillings, and the full value of the goods; and if not paid, be committed to the house of correction, as the act directs;" and it has been repeatedly held, that a statute inflicting a lesser penalty is to be taken, in that particular instance, as a virtual repeal of a statute inflicting a greater penalty on the same offence (b).

(a) The same is  
enacted by  
29 Geo. 3.  
c. 57. s. 5.

(b) *Rex v. Davis*, Cases C. L.  
228.

† *Sect. 11.* It seems also, that the goods charged to have been purloined must be furniture of such a description as is proper to be let and used with the kind of lodgings.

Case of John  
Smith Burnel,  
Dec. Sess.  
1793, on a case  
reserved for the  
opinion of the  
twelve judges.

† *Sect. 12.* It has also been decided, that an indictment on this statute, stating, that C. D. the defendant, at such a time and place, &c. "the goods and chattels of A. B. (the same goods and chattels being in a certain lodging-room in the dwelling-house of the said A. B. there situate, let by contract by the said A. B. to

(9) The act of pawning, it is apprehended, is merely evidence of the intent, and may or may not be conclusive, according as it is accompanied or

unaccompanied by other circumstances explanatory of the act and of the intention of the party.

"to the said C. D. and to be used by the said C. D. with the lodging aforesaid), then and there being found, feloniously did steal, &c." is good, as being the common form constantly used, although for want of the word "*then*" between "*situate*" and "*let*," it does not appear but that the contract was at an end at the time the felony was committed.

*Larceny by Servants, &c.*

Breach of trust by menial servants may be committed,

1. By their going away with such property as may be actually trusted to their care and keeping during the lives of their masters.

2. By despoiling such property as is constructively under their care on the death of their masters.

As to THE FIRST POINT, *viz.* Larceny by menial servants during the lives of their masters.

† Sect. 1. By 21 Hen. 8. c. 7. s. 1. IT IS RECITED, "That <sup>3 Inst. 104.</sup> divers, as well noblemen as other the king's subjects, have, upon confidence and trusts, delivered unto their servants their caskets, and other jewels, money, goods, and chattels, safely to be kept to the use of their said masters or mistresses, and after such delivery the said servants have withdrawn themselves, and gone away from their said masters or mistresses, with the said caskets, jewels, money, goods, and chattels, or part thereof, to the intent to steal the same, and defraud their said masters or mistresses thereof, and sometime being with their said masters or mistresses, have converted the said jewels, money, and other chattels, or part thereof, to their own use, which misbehaviour so done was doubtful in the common law whether it were felony or not; and by reason thereof, the aforesaid servants have been in great boldness to commit such or like offences:" and IT IS ENACTED, "That all and singular such servants, to whom any such caskets, jewels, money, goods, or chattels, by his or their said masters or mistresses, shall from henceforth be so delivered to keep, that if any such servant or servants withdraw him or them from their said masters and mistresses, and go away with the said caskets, jewels, money, goods, or other chattels, or any part thereof, to the intent to steal the same, and defraud his or their said masters or mistresses thereof, contrary to the trust and confidence to him or them put by his or their said masters or mistresses, or else being in the service of his said master or mistress, without assent or commandment of his masters or mistresses, he embezzle the same caskets, jewels, money, goods, or chattels, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal it; that if the said caskets, jewels, money, goods, or chattels, that any such servant shall so go away with, or which he shall embezzle with purpose to steal it, as is aforesaid, be of the value of forty shillings, or above, that then the same false, fraudulent, and untrue act or demeanour from henceforth shall be deemed and adjudged felony; and he or they so offending, to be punished,

“ nished, as other felons be punished for felonies committed, by the course of the common law.”

This statute shall not extend to an apprentice, or one within 18 years of age. 27 H. 8. c. 17. 28 H. 8. c. 2. Rep. by 1 Mar. sess. 1. c. 1. and made perpetual by 5 El. c. 10.

† Sect. 2. But by 21 Hen. 8. c. 7. s. 2. it is provided, “ That this act, or any thing therein contained, shall not in any wise extend, or be prejudicial to any apprentice or apprentices, nor to any person within the age of eighteen years, going away with his or their master’s goods or jewels, or otherwise converting the same to his or their own uses, during the time of their apprenticeship, or being within the age of eighteen years, but that every apprentice or apprentices, such person or persons being within the said age, doing or offending contrary to this present act, shall be, and stand in like case as they and every of them were before the making of this act; the same act to continue and endure unto the next parliament.”

† Sect. 3. The benefit of clergy was taken away from all felonies within this statute by 27 Hen. 8. c. 17. and restored by 1 Edw. 6. c. 12. But by 12 Anne, c. 7. it is enacted, “ That whoever shall feloniously steal to the value of forty shillings, or more, being in any dwelling-house or out-house thereto belonging, or shall aid or assist to commit any such offence, shall be absolutely debarred of the benefit of clergy.”—But IT IS PROVIDED, “ that this shall not extend to apprentices under the age of fifteen years, who shall rob their masters as aforesaid.”

In the construction of this (21 H. 8.) statute it hath been holden :

Sec 1 Hale, 667, 668. Dalt. c. 102. Summary, 63.

Sect. 4. FIRST, That it extends only to such as were servants to the owner of the goods, both at the time when they were delivered, and also at the time when they were stolen.

Dyer, 5. Sum. 62, 63. 3 Inst. 105. Dalt. c. 102.

Sect. 5. SECONDLY, That it is strictly confined to such goods as are delivered to keep, and therefore that a receiver, who having received his master’s rents runs away with them; or a servant, who being entrusted to sell goods, or to receive money due on a bond, sell the goods, &c. and departs with the money, is not within the statute; but that a servant who receives his master’s goods from another servant to keep for the master, is as much guilty as if he had received them from the master’s own hands, because such a delivery is looked upon as a delivery by the master.

Summ. 63. Dalt. c. 102. Dyer, 5.

Sect. 6. THIRDLY, That it includes not the wasting or consuming of goods, howsoever wilful it may be; nor the taking away of an obligation, or any other bare *chose in action*.

5 Hen. 7. 16. Grom. 50. Dalt. c. 102.

Sect. 7. FOURTHLY, That it extends not to the taking of such things whereof the actual property is not in the master at the time; and therefore, that if a servant having money, or corn, &c. delivered to him, melt down the money of his own head, without the command of his master, into a piece of plate; or turn the corn into malt, and then run away with them, that he is not within the statute, because the property of these things is so far changed, by altering them in such a manner, that they cannot be known again, and the master cannot afterwards take them without a trespass: but it is agreed, that if a servant make a suit of clothes of cloth, or a pair of shoes of leather, delivered to him by the master,

master, and then run away with them, that he is within the statute, because the property is no way altered; and even in the first case, whether the very taking of the plate or malt be within the statute or not, yet I can see no reason, why the whole act of the servant taken together, should not be looked upon as a conversion of the master's goods to his own use, with an intent to steal them, which brings it within the express letter of the statute; and it has been resolved, that a servant who changes his master's money from silver to gold, and then runs away with it, &c. is within the statute; and I can see no good distinction between that and the present case.

See *Crom.* 50.  
*Dalt.* c. 102.

† *Sect.* 8. FIFTHLY, That although the statute 21 Hen. 8. c. 7. exempts an apprentice or servant under the age of eighteen years, from the pain of felony enacted *de novo* by this statute, namely, where goods are actually delivered to him, yet it leaves him in the same condition, as to any felony at common law, as if he were not excepted; and therefore if a butler, shepherd, apprentice, or other servant, under the age of eighteen years, feloniously take away goods not delivered to them by the master, they are guilty of felony at common law, although they are under the value of forty shillings.

As to THE SECOND POINT, viz. Larceny by menial servants after the death of their masters.

† *Sect.* 9. Menial servants were construed, by the common law, to be *quodammodo* in possession of their master's household goods, between the time of his death and the ascertainment of his legal representative, and therefore their embezzling such goods was held not to be felony. To remedy this inconvenience, the statute 33 Hen. 6. c. 1. after reciting, "That divers household servants, as well of lords, as of other persons of good degree, had then of late, shortly after the death of their said lords and masters, violently and riotously taken and spoiled the goods which were of their said lords and masters at the time of their death, and the same distributed among themselves;" ENACTS, "That after information made to the chancellor by the executors of any such person, or two of them, of such riot, taking, and spoil; the chancellor, by the advice of the two chief justices, and chief baron, or two of them, may make out writs to such sheriffs as shall be thought necessary, commanding them to make such proclamation, as by the said statute is directed, for the offenders to appear in the king's bench at such a day, whereupon if they make default, they shall be attainted of felony; but if they appear, they shall be committed or bailed, till they have answered the said executors in such actions, which the said executors will declare against them, or any of them, for the riot, taking, and spoiling aforesaid."

1 Hale, 667.  
4 Burn, 118.  
This was a process much in use in case of great offences, especially about this king's reign, to convict men sometimes in civil offences, sometimes in cases criminal upon default of appearance, at the return of the proclamation.  
1 Hale, 654.  
3 Inst. 104.

By stat. 39 Geo. 3. c. 85. entitled, "an Act to protect masters against embezzlements by their clerks or servants," it is enacted "That if any servant or clerk, or if any person employed for the purpose

(1) See also 12 Geo. 3. c. 73. s. 35. 14 Geo. 3. c. 76. s. 84. And for offences by servants in particular branches of trade, vide 5 Burn. tit. Servants.



"purpose in the capacity of a servant or clerk, to any person or persons whomsoever, or to any body corporate or politic, shall by virtue of such employment receive or take into his possession any money, goods, bond, bill, note, bankers' draft, or other valuable security, or effects, for, or in the name or on the account of his master or masters, or employer or employers, and shall fraudulently embezzle, secrete or make away with the same or any part thereof; every such offender shall be deemed to have feloniously stolen the same from his master or masters, employer or employers, for whose use, or in whose name or names or on whose account the same was or were delivered to or taken into the possession of such servant, clerk, or other person so employed; although such money, goods, bond, bill, note, bankers' draft, or other valuable security, was or were not otherwise received into the possession (2) of his or their servant, clerk, or other person so employed, and every such offender, his adviser, procurer, aider or abettor being thereof lawfully convicted or attainted, shall be liable to be transported to such parts beyond the seas as his majesty shall appoint, for any term not exceeding fourteen years," &c.

This act was passed in consequence of the decision in Bazeley's case, who was convicted at the Old Bailey Sessions, Feb. 1799. It appeared that he was a clerk at Esdailes' banking-house, and authorised to receive money for the firm. A customer paid a sum of money at the compteur, which it was his duty to have put into a certain drawer, but he kept back a £100 note. The judges held this not to be larceny, but mere breach of trust, because it had never been in the possession of the prisoner's employers. But as this would have opened a door to great frauds, the above act was passed to protect the interests of traders.

2 E. P. C. 567. Upon this statute, it has been ruled that in order to warrant a judgment of transportation for fourteen years, the indictment must be specially drawn upon the statute, and that such judgment cannot be passed on a general indictment for larceny at common law.

It has also been held that the monies, &c. must be alleged to be the monies, &c. of the prosecutor, and that it is not sufficient for the property to be stated by implication, as that the prisoner received on account of G. S. and did embezzle, &c. but it must be distinctly stated, as in other cases of larceny, to be the property of G. S. (2 East, P. C. 576.)

Servants, &c. stealing master's goods, to be transported 14 years, or less punishment, at discretion of the Court.

By stat. 3 Geo. 4. c. 38. s. 2. after reciting that whereas frequent depredations have of late been committed by clerks, apprentices, and servants, to the serious detriment and loss of their masters, mistresses, or employers; and it is expedient that such offenders, when entitled to benefit of clergy, should be liable to a more severe punishment than can now by law be inflicted: It is therefore enacted, "That from and after the passing of this act, (24th June, 1822), if any clerk, apprentice, or servant whatsoever, shall

(2) The words "of such master or masters, employer or employers, then by the actual possession," were by a blunder left out of the act, though in the fair

copy, which Mr. East says was prepared by himself.

“ shall feloniously steal any goods, chattels, money, bond, bank note, cheque upon a banker or bankers’ draft, promissory note for the payment of money, bill of exchange, or other valuable security or effects, from or belonging to, or in the possession, custody, or power of his, her, or their master or masters, mistress or mistresses, or employer or employers, and shall be lawfully convicted thereof, and be entitled to the benefit of clergy, then and in every such case, such offender or offenders, instead of being subjected to such punishment as may now by law be inflicted upon persons so convicted, and entitled to the benefit of clergy, may, at the discretion of the court by or before which he, she, or they shall be convicted, be ordered and adjudged to be transported beyond the seas for any term not exceeding fourteen years, or to be imprisoned only, or to be imprisoned or kept to hard labour, in the common gaol, house of correction, or penitentiary house, for any term not exceeding three years.”

The stat. 52 Geo. 3. c. 63. intituled, “ An act for more effectually preventing the embezzlement of securities for money and other effects, left or deposited for safe custody, or other special purpose, in the hands of bankers, merchants, brokers, attornies, or other agents,” recites, “ that it is expedient that due provision should be made to prevent the embezzlement of government and other securities for money, plate, jewels, and other personal effects, deposited for safe custody, or for any special purpose, with bankers, merchants, brokers, attornies, and other agents, entrusted by their customers and employers;” and then enacts, “ that if any person or persons with whom (as banker or bankers, merchant or merchants, broker or brokers, attorney or attornies, or agent or agents, of any description whatsoever) any ordnance debenture, exchequer bill, navy, victualling or transport bill, or other bill, warrant or order for the payment of money, state lottery ticket or certificate, seaman’s ticket, bank receipt for payment of any loan, India bond or other bond, or any deed, note, or other security for money, or for any share or interest in any national stock or fund of this or any other country, or in the stock or fund of any corporation, company, or society established by act of parliament or royal charter, or any power of attorney for the sale or transfer of any such stock or fund, or any share or interest therein, or any plate, jewels, or other personal effects, shall have been deposited, or shall be or remain for safe custody, or upon or for any special purpose, without any authority, either general, special, conditional, or discretionary, to sell or pledge such debenture, bill, warrant, order, state lottery ticket or certificate, seaman’s ticket, bank receipt, bond, deed, note, or other security, plate, jewels, or other personal effects, or to sell, transfer, or pledge the stock or fund, or share or interest in the stock or fund to which such security or power of attorney shall relate, shall sell, negotiate, transfer, assign, pledge, embezzle, secrete, or in any manner apply to his or their own use or benefit, any such debenture, bill, warrant, order, state lottery ticket or certificate, seaman’s ticket, bank receipt, bond, deed, note, or other security, as hereinbefore mentioned, plate, jewels, or other personal effects, or the stock or fund, or share or interest in the stock or fund to which such security or power of attorney shall relate, in violation of good faith,

“ and

Embezzlement by bankers and others of securities deposited with them for special purposes.

“ and contrary to the special purpose for which the things herein  
 “ before mentioned, or any or either of them, shall have been de-  
 “ posited, or shall have been or remained with or in the hands of  
 “ such person or persons, with intent to defraud the owner or  
 “ owners of any such instrument or security, or the person or per-  
 “ sons depositing the same, or the owner or owners of the stock or  
 “ fund, share or interest, to which such security or power of attor-  
 “ ney shall relate, every person so offending in any part of the  
 “ united kingdom of Great Britain and Ireland, shall be deemed  
 “ and taken to be guilty of a misdemeanor, and being thereof con-  
 “ victed according to law, shall be sentenced to transportation for  
 “ any term not exceeding fourteen years, or to receive such other  
 “ punishment as may by law be inflicted on a person or persons  
 “ guilty of a misdemeanor, and as the court before which such of-  
 “ fender or offenders may be tried and convicted shall adjudge.”

The second section recites that it is usual for persons having dealings with bankers, merchants, brokers, attorneys, and other agents, to deposit or place in the hands of such bankers, merchants, brokers, attorneys and other agents, sums of money, bills, notes, drafts, cheques, or orders for the payment of money, with directions or orders to invest the monies so paid, or to which such bills, notes, drafts, cheques or orders relate, or part thereof, in the purchase of stocks or funds, or in or upon government or other securities for money, or to apply and dispose thereof in other ways, or for other purposes; and that it is expedient to prevent embezzlement and malversation in such cases also; and then enacts, “ that if any such banker, merchant, broker, attorney, “ or other agent, in whose hands any sum or sums of money, bill, “ note, draft, cheque, or order for the payment of any sum or sums “ of money shall be placed, with any order or orders in writing, and “ signed by the party or parties who shall so deposit or place the “ same, to invest such sum or sums of money, or the money to “ which such bill, note, draft, cheque, or order as aforesaid, shall “ relate, in the purchase of any stock or fund, or in or upon govern- “ ment or other securities, or in any other way or for any other pur- “ pose specified in such order or orders, shall in any manner apply “ to his or their own use and benefit, any such sum or sums of mo- “ ney, or any such bill, note, draft, cheque, or order for the payment “ of any sum or sums of money as herein before mentioned, in “ violation of good faith, and contrary to the special purpose speci- “ fied in the direction or order in writing herein before mentioned, “ with intent to defraud the owner or owners of any such sum “ or sums of money; or order for the payment of any sum or sums “ of money; every person so offending in any part of the United “ Kingdom, shall in like manner be deemed and taken to be guilty “ of a misdemeanor, and being convicted thereof according to “ law, shall incur and suffer such punishment as is herein before “ mentioned.”

*Larceny by Clerks of the Bank of England.*

† Sect. 1. By 15 Geo. 2. c. 13. s. 12. it is enacted, “ That if  
 “ any officer or servant of the Bank of England, being entrusted  
 “ with any note, bill, dividend warrant, bond, deed, or any secu-  
 “ rity

" rity, money, or other effects belonging to the said company, or  
 " having any bill, dividend warrant, bond, deed, or any security or  
 " effects of any other person lodged or deposited with the said com-  
 " pany, or with him as an officer or servant of the said company,  
 " shall secrete, embezzle, or run away with any such note, bill, di-  
 " vidend warrant, bond, deed, security, money, or effects, or any  
 " part of them ; every officer or servant so offending shall be  
 " deemed guilty of felony, and suffer death without benefit of  
 " clergy."

† Sect. 2. It has been held, previous to the passing of the above statute, that it was not felony at the common law for the cashier of the Bank of England to steal an India bond committed to his care, pursuant to the statute 12 Geo. 1. c. 32. and therefore that this statute creates a *new felony* unknown to the common law.

Case of J. Waite,  
Cases C. L. 26.

The stat. 35 Geo. 3. c. 66. s. 6. and 37 Geo. 3. c. 46. for making certain annuities created by the parliament of Ireland transferable and the dividends payable at the Bank of England, contain exactly the same provisions with respect to officers and servants of the Bank "entrusted with any note, bill, dividend warrant, or warrant for payment of any annuity, or interest, or money, or any security, money, or other effects of or belonging to the said governor, &c. or having any note, &c. or other effects of any other person or persons, body politic or corporate, lodged or deposited with the said governor, &c. or with him as an officer, or servant, &c. in pursuance of those acts."

#### *Larceny by Clerks belonging to the Post-office.*

By 9 Ann. c. 10. s. 40. it is recited, "That abuses may be committed by wilfully opening, embezzling, detaining, and delaying of letters or packets, to the great discouragement of trade, commerce, and correspondence ;" AND ENACTED, " That no person  
 " or persons shall presume wittingly, willingly, or knowingly, to  
 " open, detain, or delay, or cause, procure, permit, or suffer to  
 " be opened, detained, or delayed, any letter or letters, packet or  
 " packets, after the same is or shall be delivered into the general  
 " or other post-office, or into the hands of any person or persons  
 " employed for receiving or carrying post letters, and before delivery to the person or persons to whom they are directed, or  
 " for their use ; except by an express warrant in writing under  
 " the hand of one of the principal secretaries of state, for every  
 " such opening, detaining, or delaying ; or except in such cases  
 " where the party or parties, to whom such letter or letters,  
 " packet or packets, shall be directed, or who is or are hereby  
 " chargeable with the payment of the port or ports thereof, shall  
 " refuse or neglect to pay the same ; and except such letters or  
 " packets as shall be returned for want of true directions, and  
 " where the party, to whom the same is or are directed, cannot  
 " be found ; and that every person or persons offending in manner aforesaid, or who shall embezzle any such letter or letters,  
 " packet or packets, shall for every such offence forfeit the sum  
 " of twenty pounds ; the said penalties for any such offence committed in *England, Wales, or Berwick upon Tweed*, to be recovered by action, bill, plaint, or information in any of her  
 VOL. I. M " Majesty's

No letters to be  
opened, de-  
tained, or  
delayed.

Exceptions.

Majesty's courts of record at *Westminster*; and for any such offence committed in that part of *Great Britain* called *Scotland*, to be recovered in the court of sessions or exchequer there; such penalties respectively to be recovered by such person or persons as will inform or sue for the same, together with full costs of suit; and over and above such penalty as aforesaid, every such person or persons so offending as aforesaid, shall be for ever incapable of having, using, exercising, or enjoying any office, trust, or employment in or relating to the post-office, or any branch thereof."

Penalties of secreting or embezzling any letter with any bank bill or note, &c.

† *Sect. 2.* By 5 Geo. 3. c. 25. s. 17. it is enacted, "That if any deputy, clerk, agent, letter-carrier, or other officer whatsoever, appointed, or to be hereafter appointed, and employed in the business of the post-office, shall secrete, embezzle, or destroy any letter, packet, bag, or mail of letters, which he, she, or they, shall and may be respectively entrusted with, or which shall have come to his, her, or their hands, or possession, by virtue of their respective employments in the said post-office, containing any bank note, bank post bill, bill of exchange, exchequer bill, *South Sea* or *East India* bond, dividend warrant of the bank, *South Sea*, *East India*, or any other company, society, or corporation, navy or victualling bill, seaman's ticket, state lottery ticket, goldsmith's note for the payment of money, or other bond or warrant, bill, or promissory note for the payment of money, or *American* provincial bill of credit; or shall steal and take out of any letter or packet that shall come to his, her, or their hands or possession, by virtue of their respective employments, any such bank note, bank post bill, bill of exchange, exchequer bill, *South Sea* or *East India* bond, dividend warrant of the bank, *South Sea*, *East India*, or any other company, society, or corporation, navy or victualling bill, seaman's ticket, state lottery ticket, goldsmith's note for the payment of money, or other bond or warrant, or promissory note for the payment of money, or *American* provincial bill of credit, with intent to secrete, embezzle, or destroy the same; every such offender or offenders, being thereof convicted in due form of law, shall be deemed guilty of felony, and shall suffer death as a felon."

Penalty of any officer, &c. embezzling or misapplying the postage money, &c.

† *Sect. 3.* By 5 Geo. 3. c. 25. s. 19. it is further enacted, "That if any deputy, clerk, agent, letter-carrier, or other servant, appointed, authorized, and entrusted, to take in letters or packets, and receive the postage thereof, shall embezzle, or apply to his, her, or their own use, any money or monies by him, her, or them, received with such letters or packets, for the postage thereof; or shall burn or otherwise destroy any letter or letters, packet or packets, by him, her, or them, so taken in or received; or who, by virtue of their respective offices, shall advance the rates upon letters or packets sent by the post, and shall not duly account for the money by him, her, or them, received for such advanced postage; every such offender or offenders, being thereof convicted as aforesaid, shall be deemed guilty of felony."

† *Sect. 4.*

† Sect. 4. By 7 Geo. 3. c. 50. s. 1. It is enacted, "That it is of the utmost importance to the trade and commerce of these kingdoms, that all letters, packets, bank notes, bills of exchange, and other things, may be sent and conveyed by the post with the greatest safety and security; and it having been found necessary, that some further regulations and provisions should be made for that purpose," IT IS ENACTED, "That if any deputy, clerk, agent, letter-carrier, post boy, or rider, or any other officer or person whatsoever, employed, or to be hereafter employed, in receiving, stamping, sorting, charging, carrying, conveying, or delivering letters or packets, or in any other business relating to the post office, shall secrete, embezzle, or destroy, any letter or letters, packet or packets, bag, or mail of letters, which he, she, or they, shall and may be respectively entrusted with, or which shall have come to his, her, or their hands or possession, containing any bank note, bank post bill, bill of exchange, exchequer bill, *South Sea* or *East India* bond, dividend warrant of the bank, *South Sea*, *East India*, or any other company, society, or corporation, navy or victualling or transport bill, ordnance debenture, seaman's ticket, state lottery ticket or certificate, bank receipt for payment on any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, society, or corporation, *American* provincial bill of credit, goldsmith's or banker's letter of credit or note for or relating to the payment of money, or other bond or warrant, draught, bill, or promissory note whatsoever, for the payment of money; or shall steal and take out of any letter or packet that shall come to his, her, or their hands or possession, any such bank note, bank post bill, bill of exchange, exchequer bill, *South Sea* or *East India* bond, dividend warrant of the bank, *South Sea*, *East India*, or any other company, society, or corporation, navy or victualling or transport bill, ordnance debenture, seaman's ticket, state lottery ticket or certificate, bank receipt for payment on any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, society, or corporation, *American* provincial bill of credit, goldsmith's or banker's letter of credit or note for or relating to the payment of money, or other bond or warrant, draught, bill, or promissory note whatsoever, for the payment of money; every such offender or offenders, being thereof convicted in due form of law, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy."

Officers or others, who shall secrete, &c. any letter, &c. containing any note for payment of money; or shall steal, &c. Death,

† Sect. 5. By 7 Geo. 3. c. 50. s. 3. It is further enacted, "That if any deputy, clerk, agent, letter-carrier, officer, or other person whatsoever, employed or hereafter to be employed in any business relating to the post-office, shall take and receive into his, her, or their hands or possession any letter or letters, packet or packets, to be forwarded by the post, and receive any sum or sums of money therewith for the postage thereof, shall burn or otherwise destroy any letter or letters, packet or packets, by him, her, or them, so taken in or received; or if any such

Officers, or others, who shall destroy any letter, &c. guilty of felony.

“deputy, clerk, agent, letter-carrier, officer, or other person whatsoever, so employed, or hereafter to be so employed, shall advance the rate or rates of postage upon any letter or letters, packet or packets, sent by the post, and shall secrete, and not duly account for, the money by him, her, or them, received for such advanced postage; every such offender or offenders, being thereof convicted as aforesaid, shall be deemed guilty of felony.”

Hassell's case,  
Cases C. L. 1.

† *Sect. 6.* It seems that these statutes do not create any new offence, but that if a sorter of letters embezzle a letter containing a bank note, or any other of the securities for money mentioned in 2 Geo. 2. c. 25. he is thereby guilty of felony at common law, although such letter was entrusted to his care.

Case of Richard Clay,  
York Assizes.

† *Sect. 7.* It has been decided, that it is not necessary that the servant employed by the post-office should have taken the oaths required by 9 Ann. c. 10. s. 17. and 41. in order to be within the penalties of the act.

Rex v. Shaw,  
2 Black. 739.

† *Sect. 8.* It hath been determined, that if a clerk of the post-office be indicted on this statute, and the first count charge him as “a clerk employed in charging and sorting of letters, &c.” and a second count, as “a person employed in the business relating to the general post-office,” that the jury may legally convict the offender on the first count, by a special finding that he was a sorter only, if it appear in evidence that he was not a charger of letters; but that if, on such evidence, they acquit him generally on the first count, judgment of “guilty” on the second count shall be arrested, for it is not proved that he was a person employed in any other business relating to the post-office than as a sorter, and he is acquitted of having been guilty of the offence in that capacity.

Sloper's case,  
Cases C. L. 76.

† *Sect. 9.* It is said, that if a servant of the post-office embezzle a letter not containing any of the securities mentioned in the statute 2 Geo. 2. c. 25. and secrete it merely for the purpose of defrauding the post-office of the money which he has received for the postage of the letter, he is not indictable on the above statute for the capital felony.

Skutt's case,  
Cases C. L. 100.

† *Sect. 10.* It is also said, that it is not a capital offence within the above statute, for a servant of the post-office to secrete a letter containing money only, but that he may be indicted for the simple larceny at common law.

Secreting, embezzling, &c.  
by officers, &c.  
felony.

By the statute 52 Geo. 3. which is an act for reducing into one act all the provisions then in force inflicting the penalty of death for offences against the revenue; it is enacted by s. 2. “That if any deputy, clerk, agent, letter-carrier, post-boy, or rider, or any other officer or person whatsoever, employed by, or under the post-office of Great Britain, in receiving, stamping, sorting, charging, carrying, conveying, or delivering letters or packets, or in any other business relating to the said office; shall, after the passing of this act, secrete, embezzle, or destroy  
“any

“any letter or packet, or bag or mail of letters, with which he or she shall have been entrusted in consequence of such employment, or which shall in any other manner have come to his or her hands or possession, whilst so employed, containing the whole, or any part or parts of any bank note, bank post bill, bill of exchange, Exchequer bill, South Sea or East India bond, dividend warrant, either of the bank, South Sea, East India, or any other company, society, or corporation, navy or victualling or transport bill, ordnance debenture, seaman’s ticket, state lottery ticket or certificate, bank receipt for payment on any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, society, or corporation, American provincial bill of credit, goldsmith’s or banker’s letter of credit, or note for or relating to the payment of money, or other bond or warrant, draught, bill, or promissory note whatsoever for the payment of money; or shall steal and take out of any letter or packet with which he or she shall have been so entrusted, or which shall have so come to his or her hands or possession, the whole or any part or parts of any such bank note, bank post bill, bill of exchange, Exchequer bill, South Sea or East India bond, dividend warrant, either of the bank, South Sea, East India, or any other company, society, or corporation, navy or victualling or transport bill, ordnance debenture, seaman’s ticket, state lottery ticket or certificate, bank receipt for payment of any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, society, or corporation, American provincial bill of credit, goldsmith’s or banker’s letter of credit, or note for or relating to the payment of money, or other bond or warrant, draught, bill, or promissory note whatsoever for the payment of money; every person so offending, being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.”

And by sect. 3. accessaries before the fact are ousted of clergy, and may be tried before the principal is convicted.

By 24 Geo. 2. c. 11. s. 3. embezzlement by officers and servants of the South Sea Company of securities committed to their custody, is made felony without benefit of clergy.

*Larceny of Things, which at Common Law are considered as part of the Freehold.*

In speaking of what things larceny may be committed, Hawkins observes, in the previous part of this chapter, that they ought to be no way annexed to the freehold. It is therefore necessary to state the alterations made by statute in this respect.

*With respect to Fences, Hedges, and Orchards.*

† Sect. 1. By 43 Eliz. c. 7. “Whoever shall cut or unlawfully  
“take



"take away any corn or grain growing, or rob any orchards or gardens, or break or cut any hedge, pales, rails, or fence; or dig up, or take up any fruit-tree or trees in any orchard, garden, or elsewhere, to the intent to take and carry the same away; or shall cut or spoil any wood, or underwoods, poles, or trees standing, not being felony by the laws of this realm, their procurers and knowing receivers shall, on conviction by one witness before one magistrate, make compensation at discretion to the party injured, or be publicly whipped."

† Sect. 2. By 15 Car. 2. c. 2. the constable may search the houses of suspected wood-stealers, and carry offenders before a justice, who shall be liable to the penalties of 43 Eliz. if they do not give a satisfactory account of the wood found in their possession.

Upon these acts the following resolutions have been made.

Burnaby's case,  
Lord Ray. 900.

† Sect. 3. That these acts were not made merely against base and indigent offenders, but that a gentleman or offender so styled in the conviction, is within the penalties if he is guilty of the offence.

5 Co. 34.  
Salk. 282.

† Sect. 4. That the conviction must state the number and the nature of trees cut down; for that is the measure by which the justice is to assess the damages.

Sayer, 204.

† Sect. 5. That the manner also of the stealing must be stated in the conviction, that the Court may judge whether it be felonious or not, or whether the money ordered to be paid was an adequate compensation to the party injured.

### *Stealing Shrubs and Plants.*

† Sect. 1. By 6 Geo. 3. c. 36. IT IS RECITED, "That the disposition of nursery-men to improvements in planting and gardening, through *Great Britain*, is of great use to the public; and many nursery-men, gardeners, and others, have collected and cultivated, at great expense, roots, shrubs, and plants of every country, and imported, cultivated, and exported, great quantities thereof, and do thereby support themselves and many others of his majesty's subjects; and whereas many evil-disposed persons, well knowing the value of such roots, shrubs, and plants, have, of late years, frequently entered into nurseries, gardens, and other inclosed grounds in general, and of the nursery-men and gardeners in particular, and have dug up, taken, or carried away, out of such nurseries and garden-grounds, roots, shrubs, and plants, and likewise destroyed others on the spot, to a very considerable value:" for remedy whereof IT IS ENACTED, "That all  
"and every person and persons that shall in the night-time pluck  
"up, dig up, break, spoil, or destroy, or carry away any roots,  
"shrubs, or plants, of the value of five shillings, and which  
"shall be growing, or standing, or being in the garden-ground,  
"nursery-ground, or other inclosed ground, of any person or  
"persons whomsoever, shall be deemed and construed to be  
"guilty

Penalty on cutting down, &c. in the night-time any timber trees or roots, &c. in inclosed ground, &c.

“guilty of felony; and every such person or persons shall be subject and liable to the like pains and penalties as in cases of felony; and the court, by and before whom such person or persons shall be tried, shall, and hereby have authority to transport such person or persons, for the space of seven years, to any of his majesty’s plantations in *America*, in like manner as other felons are directed to be transported by the laws and statutes of this realm:

† Sect. 2. By 6 Geo. 3. c. 36. it is also enacted, “That all and every person and persons who shall be wilfully aiding, abetting, or assisting in such plucking up, digging up, cutting, breaking, spoiling, or destroying, or carrying away, such root, shrub, or plant, roots, shrubs, or plants, as aforesaid, of the value aforesaid; or who shall buy or receive such root, shrub, or plant, roots, shrubs, or plants, of the value aforesaid, knowing the same to be stolen; shall be subject and liable to the same punishment, as if he, she, or they, had stolen the same: any law to the contrary in any wise notwithstanding.”

† Sect. 3. By 6 Geo. 3. c. 48. s. 3. it is recited, that, “many idle and disorderly persons have, of late years, made a practice of plucking or digging up, cutting, spoiling, or destroying, and taking or carrying away, divers and sundry sorts of roots, shrubs, and plants, (many of which are of great value) out of the fields, nurseries, gardens, and garden-grounds, and other cultivated lands of divers of his majesty’s subjects;” it is therefore enacted, “That all and every person who shall pluck up, or cut, spoil, or destroy, or take, or carry away, any root, shrub, or plant, roots, shrubs, or plants, out of the fields, nurseries, gardens, garden-grounds, or other cultivated lands, of any person or persons whomsoever, without the consent of the owner or owners thereof first had and obtained, and shall be thereof convicted upon the oath of one or more credible witness or witnesses, before any one or more justice or justices of the peace for the county, city, riding, division, district, or place wherein such offence shall have been committed, shall, for the first offence, forfeit and pay such sum or sums of money as to such justice or justices shall seem meet, not exceeding forty shillings, together with the charges previous to and attending such conviction, to be ascertained by such justice or justices who shall convict the said offender; and if any person so convicted shall again commit the like offence, and shall be thereof convicted in manner aforesaid, such person and persons being so convicted, shall, for such second offence, forfeit and pay such sum of money as to the said justice or justices shall seem meet, not exceeding five pounds, together with the charges previous to and attending the conviction of such offender; and if any person so before convicted, shall a third time commit the like offence, and shall be thereof convicted, such person so convicted shall, for such third offence, be deemed guilty of felony, and the court, before whom such person shall be tried, shall and hereby hath authority to transport such person, for the space of seven years, to any of his majesty’s plantations in *America*, in like manner

Persons convicted of plucking up, &c. any root, &c. out of private cultivated ground, forfeit, &c.

“as

“as other felons are directed to be transported by the laws and statutes of this realm.”

Howe's Case,  
Cases Cro.  
Law, 378.

† *Sect. 4.* It is settled, that this latter statute, although it make the offender liable only to pecuniary penalties for the first and second offence, does not repeal the 6 Geo. 3. c. 36. but that they are *in pari materia* for the protection of shrubs under the different situations described.

Howe's Case,  
Cases Cro.  
Law, 378.

† *Sect. 5.* It has been decided on these statutes, that 6 Geo. 3. c. 36. applies only to the offence of stealing or destroying shrubs in the night-time, be their value to what amount it may.

Cases Cro.  
Law, 378.

† *Sect. 6.* It is also said that the 6 Geo. 3. c. 48. was intended to protect roots, shrubs, and plants, both by *day* and *night*.

#### *Stealing Vegetables.*

Persons stealing  
turnips, cab-  
bages, &c. from  
any garden, &c.  
shall forfeit 10s.  
on conviction,  
beside the value  
of the goods  
stolen.

† *Sect. 1.* By 13 Geo. 3. c. 32. s. 1. it is enacted, “That if any person shall steal and take away, or maliciously pull up or destroy any turnips, potatoes, cabbages, parsnips, pease, or carrots, growing or being in any garden, lands, or grounds, open or inclosed, and shall be thereof convicted before any justice or justices of the peace for the county or place where the offence shall be committed, either by the confession of the party offending, or by the oath of one or more credible witness or witnesses (which oath such justice or justices is and are hereby empowered to administer), every person so offending, and being convicted as aforesaid, shall forfeit and pay, upon such conviction, such sum of money not exceeding the sum of ten shillings, over and above the value of the goods stolen, as to such justice or justices shall seem meet; which sum of money shall be distributed between the owner of such turnips, potatoes, cabbages, parsnips, pease, or carrots, and the overseers of the poor, or other persons having the charge and disposal of the funds of the poor of such parish or place where the offence shall be committed, for the use of the poor of such parish or place, in such proportion as such justice or justices shall think fit; or the whole of such sums shall be given to the owner of such turnips, potatoes, cabbages, parsnips, pease, or carrots, or to the overseers of the poor, or other persons having the charge and disposal of the funds for the use of the poor of such parish or place, according to the discretion of such justice or justices; and in default of payment of such penalty, of which the offender hath been convicted as aforesaid, such justice or justices shall and may commit such offender to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month, unless such penalty shall be sooner paid or satisfied: and if the offence is committed in that part of Great Britain called Scotland, such justice or justices shall and may commit such offender to prison, there to remain for any time not exceeding one calendar month, unless such penalty shall be sooner paid or satisfied; and the bringing of the offender or offenders before such justice or justices of the peace may be done, and the proceedings against offenders, under the authority of this act, may be carried on, in the most summary manner.”

† *Sect.*

† *Sect. 2.* By 13 Geo. 3. c. 32. s. 2. And for the more easy conviction of persons offending against this act, it is further enacted, "That in all informations, and other proceedings for any of the offences aforesaid, the evidence of the owner or owners of such turnips, potatoes, cabbages, parsnips, pease, or carrots, and of the inhabitants of the parish or place where the offence shall be committed, shall be taken and allowed; any law, custom, rule, order, or usage, to the contrary notwithstanding."

Informations of owners to be taken and allowed.

† *Sect. 3.* But by 13 Geo. 3. c. 32. s. 3. it is provided, "That where any such conviction shall be upon the oath of the owner or owners, the whole of the penalty or forfeiture shall be paid to the overseer or overseers of the poor of the parish or place where the offence shall be committed, for the use of the poor of such parish or place."

### *Madder Roots.*

† *Sect. 1.* By 31 Geo. 2. c. 35. s. 5. IT IS RECITED, "that the growth and cultivation of madder is of great consequence to the trade and manufactures of this kingdom:" therefore for preventing the stealing or destroying of madder roots, IT IS ENACTED, "That if any person or persons shall steal and take away, or willfully and maliciously pull up or destroy any madder roots growing or being in any lands or grounds belonging to any person or persons, and shall be thereof convicted before any justice or justices of the peace of the county, town, or place, where the offence shall be committed, either by confession of the party offending, or by the oath of any credible witness or witnesses (which oath such justice or justices is and are hereby authorised and empowered to administer) every person so offending, and being convicted of such offence in manner herein before mentioned, shall, for the first offence, give and pay to the owner or owners of the madder roots so stolen, pulled up or destroyed, such satisfaction for his or their damage thereby sustained, and within such time as the said justice or justices shall appoint; and shall over and above pay down, upon such conviction, unto the overseers of the poor of the parish where the offence or offences was or were committed, for the use of the said poor, such sum of money not exceeding ten shillings, as to the said justice or justices shall seem meet; and if any such offender or offenders shall not make such recompence or satisfaction to the said owner or owners, and also pay such sum to the use of the poor, in manner and form aforesaid; then the said justice or justices shall and may commit such offender or offenders to the house of correction, for any space not exceeding one month; and shall and may order such offender or offenders to be whipped by the constable, or other officer, as to the said justice or justices shall seem meet; and if any such person or persons shall again commit the like offence, and be thereof convicted as aforesaid, then he, she, or they so offending the second time, and being thereof convicted as aforesaid, shall be committed to the house of correction for three months."

Persons convicted of stealing or destroying madder roots, are, for the first offence, to make satisfaction for the damage; and pay to the overseers of the poor of the parish, a fine not exceeding 10s. &c.

† *Sect. 2.* By 31 Geo. 2. c. 35. s. 6. it is provided, "That no person

Prosecution to be within thirty days after the offence.

“person or persons shall be prosecuted for any such offence of stealing, pulling up or destroying of madder roots, unless such prosecution be begun within thirty days after the offence committed.”

*Breaking into Lead Mines and stealing Lead.*

† Sect. 1. By 25 Geo. 2. c. 10. s. 1. it is recited, “That by experience it hath been found, that wad or black cawke, commonly called *black lead*, is and hath been necessary for divers useful purposes, and more particularly in the casting bomb shells, round shot, and cannon balls; and that such wad, black cawke, or *black lead*, hath hitherto been discovered in one mountain, or ridge of hills, only in this realm; and that great waste and destruction therein hath of late years been made by wicked and evil-disposed persons, who, by reason of the situation of the mine or mines, wad-hole or wad-holes of the said wad, black cawke, or black lead, and of the great difficulty to secure and preserve the same from being unlawfully broke, or by force entered into; and also by reason of the small punishment by the laws now in being, annexed to offences of the like kind, have been encouraged unlawfully to enter, and by force to keep possession of the same; and from thence unlawfully to take and carry away great quantities of the said wad, black cawke, or black lead; for the more effectual security of all and every mine or mines, wad-hole or wad-holes of wad or black cawke, commonly called black lead; and for preventing the unlawful breaking and entering into the same; or the unlawful taking and carrying away from such mine or mines, wad-hole or wad-holes, any wad, black cawke, or black lead; and for punishing such offenders in a more exemplary manner, than by the laws in being can now be done,” it is enacted, “That all and every person or persons that shall unlawfully break, or by force enter into any mine or mines, wad-hole or wad-holes of wad or black cawke, commonly called black lead, or into any pit, shaft, adit, or vein of wad, black cawke, or black lead, with an intent to take and carry away from thence any wad, black cawke, or black lead; or shall unlawfully from thence take and carry away any wad, black cawke, or black lead, although such mine or mines, wad-hole or wad-holes, pit, shaft, adit, or vein, be not actually broke, or by force entered into by such offender or offenders; or shall aid, abet, assist, hire, or command any person or persons to commit such offence or offences as aforesaid; that then, and in every such case, all and every such person or persons shall be deemed and construed to be guilty of felony; and it shall and may be lawful for the court or judge, before whom any such person or persons so offending as aforesaid shall be lawfully convicted, to order such offender or offenders to be committed to the prison or gaol of the said county appointed for criminals, or to some house of correction within the same county, for a time not exceeding one year, there to be kept to hard labour during all the said time, and to be publicly whipt by the common hangman, or by the master of such house of correction, at such times and at such places, and in such manner, as such court or judge shall think proper;

The entering  
any mines of  
black lead, with  
intent to steal,

or the assisting  
or hiring persons  
to do so,  
felony.

Offenders to be  
committed for a  
year, and publicly  
whipt;

“proper; or it shall and may be lawful to and for such court or judge, or for any other subsequent court held at the same place, with the like authority as the former, to order such offender or offenders to be transported to some of his majesty’s plantations beyond the seas, for a term not exceeding seven years, as such court or judge shall think most proper; and thereupon judgment shall be given that the person or persons so convicted shall be committed and whipt, or transported accordingly; and if transportation shall be directed, the same shall be executed in such manner as is or shall be provided by law for the transportation of felons; and if any such person or persons so committed or transported shall voluntarily escape or break prison, or return from transportation before the expiration of the time for which he, she, or they shall be ordered to be transported as aforesaid, such person or persons being thereof lawfully convicted, shall suffer death as a felon without benefit of clergy, and shall be tried for such felony in the county where he, she, or they so escaped, or where he, she, or they shall be apprehended.”

or to be transported for seven years;

and if they escape from prison, or return from transportation, to suffer death;

† Sect. 2. By 25 Geo. 2. c. 10. s. 2. it is further enacted, “That if any person shall be convicted or attainted of any of the offences aforesaid, and shall voluntarily escape, break prison, or return from transportation as aforesaid, and shall be apprehended in any other county or city different from that wherein the said offence was committed, the clerk of the assize, or clerk of the peace for the county or city where such conviction or attainder for the said offence or offences was had, shall, at the request of the prosecutor, or of any other on his majesty’s behalf, certify the same by a transcript in few words, containing the effect and tenor of such conviction or attainder, for which certificate two shillings and sixpence and no more shall be paid; and such certificate being produced in court shall be sufficient proof of such former conviction or attainder.”

and a certificate of the former conviction deemed sufficient proof thereof.

† Sect. 3. By 25 Geo. 2. c. 10. s. 3. it is further enacted, “That all and every person or persons who shall buy or receive any wad or black cawke, commonly called black lead, knowing the same to be so unlawfully taken and carried away as aforesaid, shall be deemed and construed to be guilty of felony, and being convicted thereof, shall be subject and liable to all the pains and penalties which any person or persons can or may by the laws and statutes of this realm be subject and liable to, for buying or receiving any goods or chattels that have been feloniously taken or stolen, knowing the same to have been stolen.”

Receivers of lead, knowing such to be stolen, guilty of felony.

*Lead or Iron, and Copper, Brass, or Bell-metal, affixed to a Dwelling-house.*

† Sect. 1. By 4 Geo. 2. c. 32. IT IS RECITED, “That the pernicious practice of stealing lead, iron bars, iron gates, iron palisadoes, and iron rails, fixed to dwelling-houses, out-houses, coach-houses, stables, and other buildings, and fixed in gardens, orchards, court-yards, fences, and outlets, belonging to dwelling-houses and other buildings, hath of late time been much used, to the great detriment of his majesty’s subjects; and it is neces-

sary, years. Stealers of lead, iron bars, &c. fixed to houses, or any fences belonging thereto, shall be guilty of felony, and be transported for seven years.

vary, for the more effectual preventing of such offences, to inflict a more exemplary punishment on such offenders, than by the laws of this realm can now be done;" AND IT IS ENACTED, "That all and every person and persons who shall steal, rip, cut, or break, with intent to steal, any lead, iron bar, iron gate, iron palisado, or iron rail whatsoever, being fixed to any dwelling-house, out-house, coach-house, stable, or other building used or occupied with such dwelling-house, or thereunto belonging, or to any other building whatsoever, or fixed in any garden, orchard, court-yard, fence, or outlet, belonging to any dwelling-house or other building, shall be deemed and construed to be guilty of felony; and every such felon and felons shall be subject and liable to the like pains and penalties as in cases of felony; and the court, by and before whom such person or persons shall be tried, shall, and hereby have power and authority to transport such felons for the space of seven years, in like manner as other felons are directed to be transported by the laws and statutes of this realm; and all and every person and persons who shall be aiding, abetting, or assisting in stealing, or in such ripping, cutting, or breaking any lead, iron bar, iron gate, iron palisado, or iron rail, fixed to any dwelling-house, out-house, coach-house, stable, or other building, or fixed in any garden, orchard, court-yard, fence, or outlet, belonging to any dwelling-house or other building, or who shall buy, or receive any such lead, iron bar, iron gate, iron palisado, or iron rail, knowing the same to be stolen, shall be subject and liable to the same punishments as if he, she, or they had stolen the same; any law to the contrary in anywise notwithstanding."

All persons who shall steal, &c. any copper, &c. fixed to any dwelling-house, &c. shall be deemed guilty of felony, and may be transported for seven years, &c.

† Sect. 2. By 21 Geo. 3. c. 68. it is enacted, "That all and every person and persons who shall steal, rip, cut, break, or remove, with intent to steal, any copper, brass, bell-metal, utensil, or fixture, being fixed to any dwelling-house, out-house, coach-house, stable, or other building, used or occupied with such dwelling-house, or thereunto belonging, or to any other building whatsoever, or fixed in any garden, orchard, court-yard, fence, or outlet, belonging to any dwelling-house, or other building, or any iron rails or fencing set up or fixed in any square, court, or other place (such person having no title or claim of title thereto), shall be deemed and construed to be guilty of felony; and the court, by and before whom such person or persons shall be tried and convicted, shall, and hereby have power and authority to transport such felons for the term of seven years, in like manner as other felons are directed to be transported by the laws and statutes of this realm; or to order and direct that such offender be kept and detained in prison, and therein kept to hard labour for any time not exceeding three years, nor less than one year; and within that time, if such court shall think fit, such offender shall be once, or oftener, but not more than three times, publicly whipped."

All persons assisting, or who

† Sect. 3. By 21 Geo. 3. c. 68. it is further enacted, "That all

"all and every person and persons who shall be aiding, abetting, or assisting, in stealing, or in such ripping, cutting, breaking, or removing any copper, brass, bell-metal, utensil, or fixture, fixed to any dwelling-house, out-house, coach-house, stable, or other building, or fixed in any garden, orchard, court-yard, fence, or outlet, belonging to any dwelling-house, or other building, or any iron rails, or fencing, set up or fixed in any square, court, or other place; or who shall buy or receive any such copper, brass, bell-metal, utensil, or fixture, iron rails, or fencing, knowing the same to be stolen, shall be subject and liable to all and every the same punishments, pains, and penalties, as if he, she, or they, had stolen the same, although the principal felon or felons has not or have not been convicted of stealing the same; any law to the contrary in anywise notwithstanding."

shall buy, liable to same punishments.

† Sect. 4. It is clear, that these statutes create a *new felony*, and therefore the indictment must state whatever the statute makes constituent parts of the offence, and conclude *contra formam statuti*.

Rex v. T. Josling, O. B. July Sess. 1784, coram ADAIR, Recorder.

† Sect. 5. It seems also, that as the legislature has created a new felony, it partakes of course of all those qualities which are incidental to a felony at common law, and therefore that the indictment must affix a value to the property stolen, in order that it may appear either grand or petit larceny.

Josling's case, *ubi supra*.

† Sect. 6. But it has been said, that an offender against this statute cannot be rendered guilty of a *capital offence*, by stating that he "*burglariously* broke and entered the dwelling-house in the night-time, and then and there stole such a quantity of lead, iron, &c. the same being fixed to the said dwelling-house, &c." for the legislature has described the offence, and limited the punishment. *Sed quære*.

By GLYN, Recorder, in the case of James Carragon, O. B. in the year 1772.

† Sect. 7. It hath been ruled, on an indictment for stealing "iron window sashes," that if it appear that the window frames from which the sashes were taken were fixed into their proper places, but that the sashes were neither hung nor beaded in the frames, but merely fastened in by laths nailed across the frames, to prevent their falling out, they are not fixed to the freehold within the meaning of these statutes.

Hedges' case, O. B. May Sess. 1779, coram WILLES, Justice.

† Sect. 8. So also it has been held, that "a wooden gate, with an iron spring latch and clasp, and two pieces of iron, called upper eyes, which may be lifted on and off the hooks of the gate-post at pleasure," is not a fixture to the freehold.

Challis's case, Essex Lent Assizes, 1784, coram GOULD, Justice.

† Sect. 9. It has also been repeatedly ruled, that a window casement, made of iron, lead, and glass, is not within these statutes; for the words, "lead, iron bar, iron grate, iron palisado, iron rail, or copper, brass, or bell-metal utensil," are to be taken as *substantive nouns*, and not as *adjectives*, describing the qualities of the things mentioned; and therefore, as a *casement* is not among the things enumerated, it is not within the statutes.

Senior's case, Cases C. L. 394.

† Sect.



Breese's case,  
O. B. Feb.  
Sess. 1785.

† *Sect. 16.* So also it has been held, that a stock-lock, which is a lock with iron-work wards in a wooden frame, is not within these statutes.

Jos. Hickman's  
case, O. B.  
May Sess. 1786,  
on a case re-  
served for the  
opinion of the  
Judges.

† *Sect. 11.* It has been decided, that "a church" is "a building" within the meaning of these statutes; and that an indictment for stealing lead affixed thereto, is good, although it do not mention the person in whom the freehold, to which the property taken was affixed, resided.

Iron rails fixed to a tombstone in a churchyard, was ruled not to be within the meaning of these statutes. J. Davis's case, O. B. Jan. 1792.

Clarke's case,  
O. B. Feb.  
Sess. 1781.

† *Sect. 12.* But it has been held, that an observatory placed in the middle of a gentleman's garden grounds is not "a building" used and occupied with a dwelling-house" within the meaning of these statutes.

Marney's case,  
O. B. June  
Sess. 1785, co-  
ram HEATH,  
Justice.

*Sect. 13.* It has also been held, that an iron bar affixed to the copper-hole of a hot-house or green-house, in a garden, is within these statutes.

The case of  
Brown and  
Stephens, O. B.  
April Sess.  
1791.

† *Sect. 14.* But it has been held, that an iron grate fixed to the ground over the mouth of a sewer, in the middle of a public highway, and not belonging to any building, but to the commissioners of sewers, is not within the statute 4 Geo. 2. c. 32.

The case of  
Thomas Breese,  
coram ADAIR,  
Recorder.

† *Sect. 15.* It has been held, that an indictment on 4 Geo. 2. c. 32. for stealing lead affixed to a dwelling-house, is not maintained by evidence that it was lead belonging to a sink, and that it was only cut, ripped, and turned up, but not taken away; but such evidence would maintain an indictment for cutting and ripping the lead with intent to steal.

### *Of Things in which none have a determinate Property at Common Law.*

There can be no felony at common law, as Hawkins has observed, of things, in which no one had a property at the time of the fact committed. It follows from hence there could be no property in any animals *feræ naturæ* before they were reduced into possession by being either dead or reclaimed. The legislature has again interfered in these instances by making it larceny to take certain of these animals in their wild state by persons having no title to take them.

### *As to Rabbits.*

The penalty for  
breaking a park  
or warren, or  
for hunting of  
conies.

\* 13 Car. 2.  
stat. 1. c. 10.  
Farther pro-  
vided by  
7 Jac. 1. c. 13.  
sect. 4.

*Sect. 1.* By 3 Jac. 1. c. 13. s. 2. it is enacted, "That if any person or persons shall, in the night time, or by day, wrongfully or unlawfully break or enter into any park impaled, or any other several grounds, inclosed with wall, pale, or hedge, and used or kept for the keeping, breeding, and cherishing of any conies, and wrongfully or unlawfully shall hunt, drive, or chase out, or take, kill, or slay any conies within any such impaled park, or closed ground with pale, wall, or other inclosure as aforesaid, against the will, mind, or pleasure of the owners, occupiers,

occupiers, or possessioners of the same, not having lawful title or authority so to do, and thereof shall be lawfully convicted at the suit of our sovereign lord the king, his heirs or successors, or the party grieved, shall suffer imprisonment of his or their bodies by the space of three months; and also shall yield and pay to the party grieved his treble damages and costs, to be assessed and rated by the justices before whom he or they shall be convicted, after the said three months expired; and shall find sufficient sureties for his and their good abearing against the king, his heirs and successors, and all his liege people, for the space of seven years after, or else shall remain and continue still in prison without bail or mainprize, until such time as he or they so offending shall find sufficient sureties during the said time and space of seven years."

† Sect. 2. By 3 Jac. 1. c. 13. s. 3. it is further enacted, "That the justices of *oyer* and *terminer*, justices of assize in their circuits, and justices of peace and gaol delivery in their sessions, shall, by virtue hereof, have power and authority to enquire, hear, and determine all and singular the said offences, by examination of the offenders, and to make and award process thereupon, as well upon indictments taken before them, as by bill of complaint, information, or any other action; in which said suit or action, no *essoin*, *wager of law*, or protection shall be allowed."

What justices may hear and determine the offences aforesaid.

† Sect. 3. By 3 Jac. 1. c. 13. s. 4. it is also enacted, "That it shall and may be lawful to the party grieved, to sue and take his further remedy against all and every such offender and offenders, for his loss and damages, and to recover the treble value of the same in that behalf, as well before the justices of *oyer* and *terminer*, justices of assize in their circuits, and justices of the peace and gaol-delivery in their sessions, or elsewhere in any other the king's majesty's courts of record at *Westminster*; and that upon true satisfaction of the said treble damages to the party grieved, or upon the confession or acknowledgment thereof by the said party offending, before the justices in open sessions holden for the county wherein the same offence shall be committed, it shall be at the liberty of the said party grieved, to whom the said offence is committed, to release at his pleasure the suretyship of the good behaviour, at any time within the said seven years or before; any thing in this present act before-mentioned or declared to the contrary notwithstanding."

The remedy of the party grieved.

In what case the suretyship of the good behaviour may be released by the party grieved.

† Sect. 4. By 3 Jac. 1. c. 13. s. 5. it is further enacted, "That if any person or persons not having any manors, lands, tenements, or hereditaments, of the clear yearly value of forty pounds, or not worth in goods or chattels the sum of two hundred pounds, shall use any gun, bow, or cross-bow, to kill any conies, or shall keep any engine-hayes, gate-nets, purse-nets, ferrets, or coney-dogs, except such person or persons as shall have any ground imparked with pale, or inclosed with wall or hedge as aforesaid, used for the keeping, breeding, or cherishing of any conies, the increasing of which said conies shall amount to the clear yearly value of forty shillings, to be letten

Penalty for shooting with gun or bow at conies, or for keeping of engines, &c.

"at

"at the least, or keepers or warreners in their parks, warrens, or grounds belonging to their charge; that then any person having lands, tenements, or hereditaments, of the clear yearly value of one hundred pounds in fee-simple, fee-tail, or for life, in his own right, or in the right of his wife, may take from the person or possession of such malefactor or malefactors, and to his own use for ever keep, such guns, bows, cross-bows, or engine-hayes, gate-nets, purse-nets, ferrets, and coney-dogs."

In what case  
the justices  
may discharge  
the suitor of  
good abearing.

† Sect. 5. By 3 Jac. 1. c. 13. s. 6. it is further enacted, "That if any person or persons, at any time hereafter, shall fortune to be bound before any the justices before-mentioned, to the king, his heirs or successors, for his or their good abearing for seven years, according to the tenor of this act, and the same party or parties so bound shall afterward, within the said seven years, come before the justices of the peace of the said county where the said offence was committed, or some of them, in open quarter-sessions, and there in the said sessions confess and acknowledge his or their said offence or offences, and that he or they is or are sorry therefor, and satisfy the party or parties grieved, according to the tenor of this act: that then the same justices before whom the said confession shall be so made, shall and may have power and authority by virtue of this act, in the same open sessions, or in any other sessions afterwards to be holden before the said justices in the said county, within the said term of seven years, if it shall seem good to their discretions, to discharge the said recognizance and bond so taken, and also the said party and parties so bound; this act, or any thing therein contained, to the contrary thereof notwithstanding."

† Sect. 6. By 3 Jac. 1. c. 13. s. 7. it is provided, "That this act, or any thing herein contained, do not extend to any park or inclosed ground hereafter to be made and used for conies, without the grant or licence of our sovereign lord the king, his heirs or successors."

† Sect. 7. By 3 Jac. 1. c. 13. s. 8. it is further provided, "That this act, nor any therein contained, shall extend to any offence or offences concerning the hunting, chasing or killing of conies, which shall be done or committed in the day-time, but only to such offences as shall be hereafter done or committed in the night-time only; any thing in this act contained to the contrary thereof notwithstanding."

No person shall  
kill conies in a  
warren not  
inclosed.

† Sect. 8. By 22 and 23 Car. 2. c. 25. s. 4. IT IS RECITED, "That divers warrens and grounds, not inclosed, are used for the breeding and keeping of conies in several parts of this kingdom, and that sundry dissolute and disorderly persons have been much encouraged to kill and destroy the conies in such warrens and grounds not inclosed, in the night-time, for that the same is not prohibited or punishable by the statutes in that behalf made and provided, which extend only to the stealing and killing of conies in warrens or grounds inclosed:" AND ENACTED, "That if any person or persons shall at any time enter wrongfully into any warren or ground lawfully used or kept for the breeding  
"or

"or keeping of conies (although the same be not inclosed), and  
 "there shall chase, take, or kill any conies against the will of  
 "the owner or occupier thereof, not having lawful title or  
 "authority so to do, and shall be thereof lawfully convicted in  
 "manner hereafter following, the parties so offending shall yield  
 "to the party grieved treble damages and costs, and suffer im- Forfeiture.  
 "prisonment by the space of three months, and after, till they  
 "shall find sureties for their good abearing."

† Sect. 9. By 22 and 23 Car. 2. c. 25. s. 5. IT IS RECITED, No person shall in the night kill any conies on the borders of any warren, except the owner of the ground.  
 "That divers idle and disorderly persons living near unto war-  
 "rens, have of late time used to kill and take the conies upon the  
 "borders of the same, and, under colour thereof, do oft-time enter  
 "into the said warrens, and there take and kill conies in the night-  
 "time, when they cannot easily be discovered:" AND ENACTED,  
 "That no person or persons shall at any time hereafter kill or  
 "take in the night-time any conies upon the borders of any  
 "warrens, or other grounds lawfully used for the breeding or  
 "keeping of conies, excepting only such person or persons as  
 "shall be owner of the soil, or lawful occupier or possessor of  
 "the ground, or any person or persons employed by him, her, or  
 "them, whereupon such conies shall be so killed or taken, upon  
 "pain that every person so offending, and being thereof lawfully  
 "convicted in manner hereafter following, shall give the party or  
 "parties injured, such recompense or satisfaction for his or their The penalty.  
 "damages, and within such time as shall be appointed by the  
 "justice before whom such offender shall be convicted, and over  
 "and above pay down presently unto the overseers, for the use  
 "of the poor of the parish where such offence shall be com-  
 "mitted, such sum of money, not exceeding ten shillings, as the  
 "said justice shall think meet: and if such offender or offenders  
 "do not make recompense or satisfaction to the said party or  
 "parties injured, and also pay the said sum to the poor in man-  
 "ner and form aforesaid, then the said justice shall commit the  
 "said offender or offenders to the house of correction for such Imprisonment.  
 "time as the said justice shall think fit, not exceeding one  
 "month."

† Sect. 10. By 9 Geo. 1. c. 22. "If any person or persons, Felony.  
 "being armed with swords, fire-arms, or other offensive weapons,  
 "and having his or their faces blacked, or being otherwise dis-  
 "guised, shall appear in any forest, chase, park, paddock, or  
 "grounds inclosed with any wall, pale, or other fence, or in any  
 "warren or place where conies have been or shall be usually  
 "kept, or shall unlawfully rob any warren or place where conies  
 "are usually kept; or shall forcibly rescue any person, being  
 "lawfully in custody of any officer or other person, for any of the  
 "offences above-mentioned; or if any person or persons shall,  
 "by gift or promise of money or other reward, procure any of his  
 "majesty's subjects to join him or them in any such unlawful  
 "act, every person so offending shall suffer death without benefit  
 "of clergy." Repealed by 4 Geo. 4. c. 54. as to so much of  
 the above act which takes away benefit of clergy.

† Sect. 11. By 5 Geo. 3. c. 14. s. 6. IT IS RECITED, "That Persons convicted of enter-  
ing warrens  
 there are many thousand acres of land in this kingdom altogether  
 VOL. I. N unfit

in the night-time, and taking or killing conies there, may be punished by transportation, &c.

unfit for cultivation, and yet the same are capable of rendering great profit, by the breeding and maintaining conies; as well to the owners of such lands, as to a multitude of industrious manufacturers, who gain their livelihood by working up coney wool; and that a great part of the said land is already used as warrens, in the breeding and maintaining conies; but because divers disorderly persons, neglecting their own lawful trades, have betaken themselves to the taking, killing, and stealing of conies in the night-time, whereby the owners and occupiers of such warrens are greatly discouraged, and many such owners and occupiers have been induced to destroy such warrens, and others have been deterred from stocking other lands, to the great prejudice of the manufacturers of this kingdom; and that the provisions already subsisting have, by experience, been found insufficient for the effectual preservation of conies in warrens;" AND ENACTED, "That if any person or persons shall wilfully and wrongfully, in the night-time, enter into any warren or grounds lawfully used or kept for the breeding or keeping of conies, although the same be not inclosed, and shall then and there wilfully and wrongfully take or kill, in the night-time, any coney or conies, against the will of the owner or occupier thereof, or shall be aiding and assisting therein, and shall be convicted of the same before any of his majesty's justices of *oyer and terminer*, or general gaol delivery, for the county where such offence or offences shall be committed; every such person and persons so offending, and being thereof lawfully convicted in manner aforesaid, shall and may be transported for the space of seven years, or suffer such other lesser punishment by whipping, fine, or imprisonment, as the court, before whom such person or persons shall be tried, shall, in their discretion, award and direct."

† *Sect. 12.* By 5 Geo. 3. c. 14. s. 7. it is provided, "That no person who shall be convicted of any offence against this act, shall be liable to be convicted for any such offence under any former act or acts, law or laws, now in force."

† *Sect. 13.* By 5 Geo. 3. c. 14. s. 8. IT IS RECITED, "That great mischief and damage had been, and still may be occasioned by the increase of conies upon the sea and river banks in the county of *Lincoln*, or upon the land or ground within a certain distance from the said banks;" AND ENACTED, "That nothing in this act contained shall extend, or be construed to extend, to prevent any person or persons from killing and destroying, or from taking and carrying away, in the day-time, any conies that shall be found on any sea or river (1) banks, erected, or to be erected, for the preservation of the adjoining lands from being overflowed by the sea or river waters, so far as the flux and reflux of the tide does or shall extend, or upon any land or ground within one furlong distance of such sea or river banks, so far as the flux and reflux of the tide does or shall extend, or upon any land or ground within one furlong distance of such sea

Act not to extend to destroying conies in the day-time, in *Lincoln*, &c.

(1) This exemption is obviously meant to protect the sea and river banks, to which the burrows of rabbits will do considerable damage.

“ sea or river banks; but that it shall and may be lawful to and  
 “ for any person or persons to enter upon any such banks, land,  
 “ or ground, as aforesaid, within the said county of *Lincoln*, and  
 “ to kill, destroy, take, and carry away, in the day-time, to his or  
 “ their own use, any conies so found upon any such banks, land,  
 “ or ground, as aforesaid, within the said county, he or they doing  
 “ as little damage as may be to the owner or tenant of such  
 “ banks, land, or ground; any thing in this or any other act con-  
 “ tained to the contrary notwithstanding.”

† *Sect. 14.* By 5 Geo. 3. c. 14. s. 9. it is also provided, “ That  
 “ no person or persons shall be obliged to make satisfaction for  
 “ any damages that may be occasioned by such entry, unless  
 “ such damages shall exceed the sum of one shilling.”

The general result of these statutes appears to be, that by st.  
 of Jas. 1. c. 13. if a wrongdoer shall hunt, drive out, take, or  
 kill any coney, in the night-time, in any inclosed ground kept for  
 that purpose, which was such at the time of passing the act,  
 or has become so since by the king's licence, he may be prose-  
 cuted for the misdemeanor at the assizes or sessions. By the  
 stat. 22, 23 Car. 2. c. 25. s. 4. if he chase, take, or kill any  
 coney, either by day or night, in any ground used for keeping  
 conies, whether inclosed or not, he is liable to be convicted be-  
 fore a magistrate. The stat. 5 Geo. 3. c. 14. gives jurisdiction  
 to the justices of *oyer and terminer* and gaol delivery, where the  
 offence of *taking* or *killing* any coney is committed, in the  
 night-time, in any ground which is usually appropriated for the  
 keeping of them, whether inclosed or not; and gives a discre-  
 tionary power of transporting the offender. And if any such  
 place, where hares or conies are kept, be robbed at any time by  
 any offender armed and disguised, it is made felony without be-  
 nefit of clergy by the stat. 9 Geo. 1. c. 22. (2 E. P. C. 614.)

But now by stat. 4 Geo. 4. c. 54. the punishment of death  
 inflicted by the 9 Geo. 1. on those killing conies, and being  
 armed and disguised, is repealed; in lieu whereof is substituted  
 transportation for seven years, or imprisonment for three years,  
 with or without hard labour, at the discretion of the court.

### *Deer Stealing.*

† *Sect. 1.* By 9 (1) Geo. 1. c. 22. “ If any person or persons,  
 “ being armed with swords, fire-arms, or other offensive wea-  
 “ pons,

(1) This act, which is generally known by the  
 title of the *Black Act*, creates a variety of of-  
 fences, of which the following is an abstract.

(1) “ If any person or persons, *being armed with  
 swords, fire-arms, or other offensive weapons*, and  
 having his or their *faces blacked*, or being *otherwise  
 disguised*, shall appear in any forest, chase, park,  
 paddock, or grounds inclosed with any wall, pale,  
 or other fence, wherein any deer have been or  
 shall be usually kept.

Or (2) in any warren or place where conies  
 have been or shall be usually kept.

Or (3) in any high road, open heath, common  
 or down.

Or (4) shall unlawfully and wilfully hunt,  
 wound, kill, or destroy any red or fallow deer.

Or (5) unlawfully rob any warren or place where  
 conies or hares are usually kept.

Or (6) shall unlawfully steal, take and carry  
 away any fish out of any river or pond.

Or (7) if any person or persons (*that is, not being  
 armed or disguised, or whether so or not*) shall unlaw-  
 fully and wilfully hunt, wound, kill, destroy, or  
 steal any red or fallow deer fed or kept in any  
 places in any of his majesty's forests or chases  
 which are or shall be inclosed with pales, rails, or  
 other fences; or in any park, paddock, or grounds in-  
 closed where deer have been or shall be usually kept.

pons, and having his or their faces blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer have been or shall be usually kept, or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer; or if any person or persons (whether armed and disguised or not) shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, fed or kept in any places in any of the king's forests or chases which are or shall be inclosed with pales, rails, or other fences; or in any park, paddock, or grounds inclosed, where deer have been or shall be usually kept; or shall forcibly rescue any person, being lawfully in custody of any officer or other person, for any the said offences; or shall, by gift or promise of money, or other reward, procure any to join him or them in any such unlawful act: every person so offending, being thereof lawfully convicted (in any county in *England*), shall be guilty of felony without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods."

† Sect. 2. By 16 Geo. 3. c. 30. IT IS RECITED, "that the statutes now in force for the discovery and punishment of deer-stealers are numerous, and many of them ineffectual: and whereas the good purposes thereby intended might be better effected, if such of the said statutes as are found to be defective were repealed, and such good provisions as are therein contained, together with such further provisions as may be expedient, were reduced into one act;" and therefore ENACTED, "That if any person or persons shall course or hunt, or shall take in any slip, noose, toyle, or snare, or shall kill, wound, or destroy, or shall shoot at, or otherwise attempt to kill, wound, or destroy, or shall carry away, any red or fallow deer, in any forest, chase, purlieu, or ancient walk, whether inclosed or not, or in any inclosed park, paddock, wood, or other inclosed ground, where deer are, have been, or shall be usually kept, without the consent of the owner, or without being otherwise duly authorised, or shall be aiding, abetting, or assisting therein or thereunto, every person so offending, by coursing, hunting, shooting at, or otherwise attempting to kill, wound, or destroy, or by aiding therein, or thereunto, shall forfeit, for every such offence, the sum of twenty pounds; and every person so offending by killing, wounding, or destroying, or by taking in any slip, noose,

Penalty on any persons who shall hunt, &c. any fallow deer, in any forest, &c.

Or (8) shall unlawfully and maliciously break down the mound or head of any fish-pond whereby the fish shall be lost and destroyed.

Or (9) shall unlawfully kill, maim, or wound any cattle.

Or (10) cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit.

Or (11) shall set fire to any house, barn, or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood.

Or (12) shall wilfully and maliciously shoot any person in any dwelling-house or other place.

Or (13) shall knowingly send any letter without

any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing.

Or (14) shall forcibly rescue any person being lawfully in custody of any officer or other person for any of the offences before-mentioned.

Or (15) if any person or persons shall, by gift or promise of money, or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy.—See *postea* as to the repeal (by st. 4 Geo. 4. c. 84.) of so much as excludes benefit of clergy, p. 189.

“noose, toyle, or snare, or by carrying away, or by aiding therein respectively, shall, for every deer so wounded, killed, destroyed, taken or carried away, forfeit and pay the sum of thirty pounds; and if the offender in any of the cases aforesaid shall be a keeper of, or person in any manner entrusted with the custody or care of deer, in the forest, chase, purlieu, ancient walk, or inclosed park, paddock, or wood, or other inclosed place, where the offence shall be committed, every such offender shall forfeit and pay double the penalty herein-before appointed to be paid by other offenders; and if any person or persons, after having been convicted of any of the aforesaid offences, shall offend a second time against this act, by committing any of the aforesaid offences, such second offence, whether it be the same as the first offence, or be any other of the aforesaid offences, shall be deemed and adjudged to be felony, and the person guilty thereof, being lawfully convicted upon indictment, shall be transported to one of his majesty’s plantations in *America* for the space of seven years.”

† Sect. 3. By 16 Geo. 3. c. 30. s. 2. it is further enacted, “That every person who hath been, or, before the commencement of this act, shall be convicted under any statute now in force, for unlawfully hunting, coursing, killing, taking, or carrying away, any deer out of any forest, chase, purlieu, ancient walk, park, paddock, wood, or inclosed ground, shall be subject and liable to the several pains and penalties by such statute provided, in like manner as if this act had not been made; and in case any such offender shall, after the commencement of this act, be guilty and convicted of any of the aforesaid offences against this act (the legal proof of such first or former conviction having been first made), every such person shall be deemed and adjudged to have committed a second offence against this act, in like manner as if this act had been in force at the time of such first conviction, and as if such conviction had been made under the provisions of this act.”

Persons convicted under former acts, still liable to penalties, &c.

† Sect. 4. By 16 Geo. 3. c. 30. s. 3. After RECITING, “To the intent that the prosecution of persons who shall offend a second time in manner aforesaid, may be carried on with as little expense and trouble as is possible,” it is further ENACTED, “That the justice before whom any person shall, after the commencement of this act, be convicted for the first time of any of the offences before described, shall transmit such conviction, under his hand and seal, to the quarter-session which next after such conviction shall be holden for the county, riding, division, city, town, or place, wherein such first offence shall be committed, there to be filed by the clerk of the peace, and to be kept amongst the records of the peace; and such conviction so filed, or a true copy thereof certified and subscribed by such clerk of the peace, shall be sufficient evidence to prove the conviction of such first offence as aforesaid.”

How justices to proceed.

† Sect. 5. By 16 Geo. 3. c. 30. s. 4. it is further enacted, “That it shall be lawful for any one justice of the peace, upon complaint made to him on oath by any credible person, that  
“there

Justices may grant warrants to search.



“ there is reason to suspect any person or persons of having in  
 “ his, her, or their custody or possession, or in any dwelling-  
 “ house, out-house, yard, garden, or place, any red or fallow deer,  
 “ which shall have been unlawfully killed, or the head, skin, or  
 “ other part thereof, or any slip, noose, toyle, snare, or other en-  
 “ gine, for the unlawful taking of deer, by warrant under his  
 “ hand and seal, to cause such person and persons, and such  
 “ dwelling-house, out-house, garden, or place, to be searched;  
 “ and if any red or fallow deer suspected to have been unlaw-  
 “ fully killed, or the head, skin, or other part thereof, or any slip,  
 “ noose, toyle, snare, or other engine, suspected to be used for  
 “ the unlawful taking or killing of deer, shall be found in his,  
 “ her, or their custody or possession, or in such dwelling-house,  
 “ out-house, garden, or place, to cause the same, and such per-  
 “ son or persons so having possession, or in whose dwelling-  
 “ house, out-house, garden, or other place, the same shall be  
 “ found, to be brought before any justice of the peace having  
 “ jurisdiction; and if such person or persons shall not produce  
 “ before such justice the party of whom he, she, or they received  
 “ the same, or satisfy such justice that he, she, or they came law-  
 “ fully by such deer, or the head, skin, or other part thereof, or  
 “ had a lawful occasion for such slip, noose, toyle, snare, or other  
 “ engine, or did not keep the same for any unlawful purpose,  
 “ then every such person shall forfeit any sum not exceeding  
 “ thirty pounds, nor less than ten pounds, at the discretion of  
 “ such justice.”

In case persons  
 cannot be con-  
 victed, how  
 justices to  
 proceed.

† Sect. 6. By 16 Geo. 3. c. 30. s. 5. it is further enacted,  
 “ That if any red or fallow deer, suspected to have been unlaw-  
 “ fully killed, or the head, skin, or other part of such deer shall,  
 “ on a search under a warrant from any justice of the peace, be  
 “ found in the possession or custody of any person or persons,  
 “ or in any dwelling-house, out-house, garden, or other place, or  
 “ shall be proved to have been in the possession, house, out-  
 “ house, garden, or place, of any person or persons who may be  
 “ justly suspected to have come dishonestly or unlawfully by the  
 “ same as aforesaid; and such person or persons so in pos-  
 “ session, or the owner or occupier of such dwelling-house, out-  
 “ house, garden, or other place, shall not, under the provisions  
 “ aforesaid, be liable to conviction; then, and in every such case,  
 “ for the discovery of the party or parties who actually killed or  
 “ stole such deer, it shall and may be lawful to and for any jus-  
 “ tice of the peace having jurisdiction, as the evidence given and  
 “ the circumstances of the case shall require, to summon before  
 “ him, at his discretion, every person through whose hands such  
 “ deer, or the head, skin, or other part thereof so found, shall  
 “ appear to have passed; and if the person and persons from  
 “ whom such deer, or the head, skin, or other part thereof, shall  
 “ appear to have been first received, or who having had pos-  
 “ session thereof, shall not give proof, to the satisfaction of such  
 “ justice, that he, she, or they came lawfully by the same, such  
 “ person or persons shall, on every conviction, forfeit and pay any  
 “ sum not exceeding thirty pounds, nor less than ten pounds, at  
 “ the discretion of such justice.”

† Sect.

† Sect. 7. By 16 Geo. 3. c. 30. s. 6. it is further enacted, <sup>Suspected persons, &c.</sup> That in case it shall appear, on the oath of a credible witness, that any person or persons hath or have had in his, her, or their possession, house, out-house, garden, or place, any red or fallow deer, or the skin, head, or other part thereof, and shall be reasonably suspected to have come dishonestly or unlawfully thereby, then, and in every such case, every such person or persons, and all other persons through whose hands the same shall appear to have passed under the like suspicion, shall and may be proceeded against in like manner and form, and on conviction shall be subject and liable to the same penalty or penalties, as if such deer, or the head, skin, or other part thereof, had been found in the possession, house, out-house, garden, or place, of such person or persons, upon a search made under and by virtue of any such warrant as aforesaid."

† Sect. 8. By 16 Geo. 3. c. 30. s. 7. it is further enacted, <sup>Penalty on setting nets, &c.</sup> That in case any person or persons shall set, lay, or use, any net, wire, slip, noose, toyle, or other engine, for the purpose of taking or killing deer, within or upon any forest, chase, purlieu, or ancient walk, or in the ring, or outer fence or bank dividing the same from the adjoining lands; or in any inclosed park, paddock, wood, or ground, where deer are, have been, or shall be usually kept, such person or persons, not being the owner of such forest, chase, purlieu, ancient walk, park, paddock, wood, or ground, or entrusted with the care of the deer within the same, and shall be convicted of any of such offences, every such offender shall forfeit and pay, for the first offence, any sum not exceeding ten pounds, nor less than five pounds; and if afterwards convicted of any of the offences last mentioned, shall, on every conviction after the first, forfeit and pay any sum not exceeding twenty pounds, nor less than ten pounds; which said respective forfeitures shall be set at the discretion of the justice or justices before whom the offender or offenders shall be convicted of such first or further offence."

† Sect. 9. By 16 Geo. 3. c. 30. s. 8. it is further enacted, <sup>Penalty on pulling down, or destroying, the pale or pales, or any part of the walls of any forest, chase, purlieu, ancient walk, park, paddock, wood, or other ground, where any red or fallow deer shall be then kept, without the consent of the owner or person chiefly entrusted with the custody thereof, or being otherwise duly authorised, every person so offending shall be subject unto the forfeiture and penalty hereby inflicted for the first offence of killing of any deer."</sup> That if any person or persons shall at any time wilfully pull down or destroy, or cause to be wilfully pulled down, or destroyed, the pale or pales, or any part of the walls of any forest, chase, purlieu, ancient walk, park, paddock, wood, or other ground, where any red or fallow deer shall be then kept, without the consent of the owner or person chiefly entrusted with the custody thereof, or being otherwise duly authorised, every person so offending shall be subject unto the forfeiture and penalty hereby inflicted for the first offence of killing of any deer."

† Sect. 10. By 16 Geo. 3. c. 30. s. 9. it is further enacted, <sup>Penalty on carrying fire-arms, &c.</sup> That if any person or persons carrying any gun, or other fire-arms, or any sword, staff, or other offensive weapon, shall come into any forest, chase, purlieu, or ancient walk, or into any inclosed park, paddock, wood, or into any other ground where deer are usually kept, be the same inclosed or not inclosed, with an intent unlawfully to shoot at, course, or hunt, or to take in  
" any

“any slip, noose, toyle, snare, or other engine, or to kill, wound, destroy, or take away any red or fallow deer, it shall be lawful for every ranger or keeper, or person entrusted with the care of such deer, to seize and take from such person and persons, in and upon such forest, chase, purlieu, ancient walk, park, paddock, wood, or other ground, to and for the use of the owner thereof respectively, all such guns, fire-arms, slips, nooses, toyles, snares, or other engines, and all dogs there brought for coursing deer, in the same and like manner as the game-keepers of manors are impowered by law, within their respective manors, to seize and take dogs, nets, or other engines, in the custody of persons not qualified by the laws to keep the same; and if any such person or persons shall there unlawfully beat or wound any ranger or keeper, or his or their servants or assistants, in the execution of his or their office or offices, or shall attempt to rescue any person in the lawful custody of any such ranger, keeper, servant, or assistant, every person so offending shall be deemed and adjudged to be guilty of felony, and on being lawfully convicted on indictment, shall be transported to one of his majesty's plantations in *America* for the space of seven years.”

How justices to proceed on information of offences.

† Sect. 11. By 16 Geo. 3. c. 30. s. 10. it is further enacted, “That, upon complaint or information upon oath, of any one or more credible witness or witnesses, before any one justice of the peace having jurisdiction of any offence committed against this act, it shall and may be lawful to and for such justice (except in such cases only where the justice is specially directed previously to summon the party before him) to cause the person or persons, who shall be charged by such complaint or information, to be apprehended by warrant under the hand and seal of such justice, and to be brought before him at such time and place as shall be specified in and by such warrant, and thereupon such justice shall and may proceed to hear the matter of such complaint or information, and to adjudge and determine the same; and in such case where it is provided by this act that the party complained of shall be summoned to appear, if the party so summoned shall not appear according to such summons, then, upon due proof made of the service of such summons, either personally, or by leaving the same at his dwelling-house, lodgings, or other usual place of abode, it shall be lawful for the justice, before whom the party was so summoned to appear, to apprehend such party by warrant, and to proceed as if no previous summons had been directed by this act.”

Penalties.

† Sect. 12. By 16 Geo. 3. c. 30. s. 11. it is further enacted, “That all the pecuniary penalties of this act shall be recoverable before one or more justice or justices of the peace for the county or other division in which the offence shall be committed, on proof of the offence, by the oath of one or more credible witness or witnesses, or on confession of the offender; and one moiety of each penalty shall belong to the king's majesty, his heirs and successors, and be paid, for his and their use, into the hands of such person or persons as the said justice or justices shall direct, and the other moiety thereof shall belong and be paid to the informer or informers prosecuting for the same;” and

and in case of non-payment thereof, with the charges incident to the conviction, immediately upon the conviction, the said penalty or penalties, and the charges incident, shall be levied by distress and sale of the goods and chattels of every such offender, by warrant under the hand and seal or hands and seals of the justice or justices before whom such conviction shall be made; and for want of sufficient distress, the offender or offenders, except in such cases only where it is otherwise provided by this act, shall be sent by the said justice or justices to the common gaol of the county or place where the offence shall be committed for the space of one whole year, without bail or mainprize, unless the said penalty, and charges incident, shall be sooner paid."

† Sect. 13. By 16 Geo. 3. c. 30. s. 12. And to the end, That persons convicted of any of the offences for which pecuniary penalties are inflicted by this act, may not, by flight or removal after conviction, evade imprisonment where such penalties shall not be paid on conviction, and sufficient distress cannot be found for raising such penalties;" it is further enacted, That it shall and may be lawful for the justice or justices of the peace, before whom any offender shall be convicted of having incurred any pecuniary penalty of this act, immediately after such conviction, to order him or her into custody, in case he or she shall not immediately pay the penalty due on such conviction, during such time, not exceeding three days, as such justice or justices shall think proper to allow for return of the warrant for raising the penalty by distress and sale as aforesaid."

† Sect. 14. By 16 Geo. 3. c. 30. s. 13. It is provided, "That Proviso. if it shall appear to the satisfaction of such justice or justices, either by the confession of the party convicted or otherwise, that such party hath not goods or chattels sufficient whereon to levy the penalty or penalties so due, then, and in such case, the said justice or justices shall and may, without issuing any warrant of distress, proceed to commit the party so convicted, as if a warrant of distress had been issued, and a *nulla bona* returned thereon."

† Sect. 15. By 16 Geo. 3. c. 30. s. 14. It is also provided, Regulations where security is given. That if any person, committed for any first offence against this act, shall, before his commitment to prison, procure security to be given by two sufficient sureties, to the satisfaction of the justice or justices before whom he shall be so convicted, for payment of the penalty or penalties incurred, with the charges incident, within six days, inclusive of the day of conviction, then, and in such case, it shall be lawful for such justice or justices to accept such security, and upon non-payment thereof at the time to be stipulated for that purpose, to cause the party convicted, and his said sureties, to be apprehended by warrant under his or their hand and seal, or hands and seals, and them to commit to the common gaol of the county or place where the offence was committed, for such space of time as the party convicted was subject and liable to have been imprisoned in case  
"no

"no such security had been given, unless the penalty or charges shall be sooner paid."

Keeper may apprehend persons, &c.

† *Sect. 16.* By 16 Geo. 3. c. 30. s. 15. it is further enacted, "That it shall and may be lawful for any keeper or under-keeper of any forest, chase, purlieu, ancient walk, paddock, park, or other ground inclosed, where deer are, have been, or shall be usually kept, and their servants or assistants, to seize and apprehend, upon the spot, any person or persons whom they shall discover in the actual fact of hunting, coursing, killing, wounding, shooting at, taking, destroying, or carrying away, any red or fallow deer from any such forest, chase, purlieu, or ancient walk, whether inclosed or not, or in any inclosed park, paddock, wood, or in any other inclosed ground, or attempting so to do, or in setting or laying any net, wire, slip, noose, toyle, snare, or other engine therein, for the taking, killing, or destroying of deer therein, and to carry such offender or offenders before some neighbouring justice of the peace having jurisdiction, to be dealt with according to law."

Offenders committed, may be enlarged.

† *Sect. 17.* By 16 Geo. 3. c. 30. s. 16. it is further enacted, "That in case any offender for his first offence against this act shall, for want of a sufficient distress, be committed to gaol, and shall, whilst in gaol, obtain the consent in writing of the prosecutor, and also of the owner, ranger, forester, keeper, or other person chiefly entrusted with the care of the deer in the forest, chase, purlieu, ancient walk, park, paddock, or place, wherein the offence was committed, for his enlargement; that then, and in every such case, it shall and may be lawful to and for the justices of the peace having jurisdiction, at their general or quarter-sessions, to cause such offender to be brought before them, and thereupon by their order to direct the keeper of such gaol to set such offender at liberty; and the said keeper is hereby directed to obey such order accordingly; any thing herein-before contained to the contrary notwithstanding."

Discovery, &c.

† *Sect. 18.* And by 16 Geo. 3. c. 30. s. 17. for the better discovery of offenders against this act, it is further enacted, "That any person who shall offend against this act, and shall make discovery of any other person or persons who hath or have offended against the same, so as he, she, or they, be duly convicted of such offence according to this act; then, and in such case, such discoverer shall be discharged of all the forfeitures and penalties of this act, by him, her, or them incurred previous to such discovery."

How justices to proceed for conviction of offenders.

† *Sect. 19.* By 16 Geo. 3. c. 30. s. 18. "And, in order to prevent the quashing of convictions of offenders against this act for want of form," it is further enacted, "That the conviction and convictions of all and every offenders against this act shall be certified by the justice or justices of the peace before whom the same shall be made, to the next general quarter-sessions of the peace, to be filed amongst the records of the said sessions; which said conviction shall be good and effectual in law to all intents and purposes, and shall not be quashed, set aside, or adjudged."

“adjudged void or insufficient, for want of any form or words whatsoever.”

† *Sect. 20.* By 16 Geo. 3. c. 30. s. 19. it is further enacted, *Certiorari allowed, &c.*  
 “That no *certiorari* shall be allowed to remove any conviction made, or other proceedings, of, for, or concerning any matter or thing in this act, unless the party or parties convicted shall, before the allowance of such *certiorari*, become bound, to the person or persons prosecuting, in the sum of one hundred pounds, with sufficient sureties as the justice or justices of the peace before whom the offender was convicted, with condition to pay unto the said prosecutors, within thirty days after such conviction confirmed, on a *procedendo* granted, their full costs and damages, to be ascertained upon their oaths; and shall become also bound to the justice or justices of the peace before whom such conviction was made, with such sufficient sureties as such justice or justices shall approve of, in the penalty of sixty pounds for each offence, with condition to prosecute such writ of *certiorari* with effect, and to pay such justice or justices the forfeitures due by such conviction, to be distributed as by this act is directed, or to render the person or persons convicted to such justice or justices, within thirty days next after such conviction shall be confirmed, or a *procedendo* granted; and that, in default thereof, it shall be lawful to proceed to the levying of the penalty mentioned in such conviction, in such manner as if no such *certiorari* had been awarded.”

† *Sect. 21.* By 16 Geo. 3. c. 30. s. 20. it is further enacted, *Confirmation of convictions.*  
 “That after the confirmation of any conviction or convictions upon this act, by any of the superior courts at *Westminster*, and delivering the rule to the said justice or justices, whereby such conviction or convictions hath or have been so confirmed, it shall and may be lawful for such justice or justices to proceed against the party or parties convicted, in the same manner as if a *procedendo* had been granted.”

† *Sect. 22.* By 16 Geo. 3. c. 30. s. 21. it is provided, *Appeal.*  
 “That if any person or persons shall think him, her, or themselves aggrieved by the judgment or determination of any justice or justices of the peace, upon conviction of or for any of the offences in this act, and shall not have sought his remedy by removing the matter by *certiorari* as aforesaid, such person or persons may appeal from the judgment of the said justice or justices to the general or quarter-sessions of the peace, to be held for the said county, division, or place, where such person or persons was or were convicted, next after the expiration of twenty days from the time of such conviction; but the person or persons so appealing shall, and he, she, and they are hereby required and directed to give at least six days notice in writing to the prosecutor or prosecutors of such person or persons as shall so appeal, of such his, her, or their intention of bringing and prosecuting such appeal, and of the matter thereof, and shall enter into recognizance before some justice or justices of the peace for the county, division, or place, wherein the conviction or judgment was made or given, with two sufficient  
 “sureties,

" sureties, to be approved by the said justice or justices, on conviction, to appear and try such appeal at the general or quarter-session which shall be held in and for the county, division, or place, wherein such conviction or judgment was made or given, next and immediately after the expiration of ten days from the time of such conviction, and to abide by the order or determination of such Court, and for payment of such costs and charges as shall be awarded at the said Court, and every such appeal and appeals shall, by the Court at the said general or quarter-sessions, to which such appeal or appeals is or are made, be then examined, and the facts and circumstances of the case fully inquired into, and the matter then finally heard and determined; and in case such judgment, determination, or conviction, as aforesaid, shall be then and there affirmed, the party appealing shall pay unto the prosecutor or prosecutors, his, her, or their full costs, to be ascertained by order of the said Court of general or quarter-sessions."

† Sect. 23. By 16 Geo. 3. c. 30. s. 22. It is also provided, " That in case any person or persons, thinking him, her, or themselves aggrieved as aforesaid, shall have paid the penalty inflicted by this act for the offence of which he, she, or they shall have been convicted, or shall be then imprisoned; every such person or persons having so paid, or being so imprisoned, may appeal to such judgment, order, determination, or conviction as aforesaid, on entering into recognizance, by himself, herself, or themselves only, and without any surety or sureties, conditioned as before mentioned, the said penalty remaining in the hands of such justice or justices, or such person or persons continuing in prison in the mean time, and until the merits of the said appeal shall be heard and finally determined."

Proceedings not  
to be quashed,  
&c.

† Sect. 24. By 16 Geo. 3. c. 30. s. 23. It is also provided, " That no such conviction made, or judgment given as aforesaid, shall be set aside by the said Court or general or quarter-sessions, for want of form, or for want of stating, or through the misstating of any facts, circumstances, or matter whatsoever, in case the facts alleged in the said conviction, or on which the same shall be grounded, shall be proved to the satisfaction of the said Court; but such appeal and appeals shall be decided on the merits of the case only; nor shall such conviction or judgment be removed or removeable by *certiorari*, or any other writ or process whatsoever, into any of his majesty's courts of record at *Westminster*; any law or statute to the contrary notwithstanding."

General issue.

† Sect. 25. By 16 Geo. 3. c. 30. s. 24. It is provided and enacted, " That if any person or persons shall be sued or prosecuted for any matter or thing which he or they shall do in pursuance of this act, it shall and may be lawful to and for the person or persons so sued or prosecuted to plead the general issue, and give the special matter in evidence; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or suffer a discontinuance, or if upon a demurrer judgment shall be given against the plaintiff, the defendant shall have and recover his  
" treble

Treble costs.

“treble costs, and have the like remedy for the same as any defendant hath in any other case by law.”

† Sect. 26. By 16 Geo. 3. c. 30. s. 25. it is further enacted, “That every prosecution for any offence against this act shall be commenced within twelve calendar months, but not after, from the time of the offence committed; and that such persons as shall be prosecuted under this act for any of the offences aforesaid, shall not be liable to prosecution for the same offences under any other act of parliament, or in any court of attachment, swainmote, eyre, or any forest court.”

Prosecutions within twelve months, &c.

† Sect. 27. By 16 Geo. 3. c. 30. s. 26. it is further enacted, “That all actions, writs, and prosecutions, to be commenced against any person or persons for any thing to be done under or in pursuance of this act, shall be laid and tried in the county or place where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise.”

Limitation of actions.

† Sect. 28. By 16 Geo. 3. c. 30. s. 28. it is provided, and further enacted, “That nothing contained in this act shall extend to that part of Great Britain called Scotland.”

Though the act mentions only red or fallow deer, yet the cross breeds, such as what is called a bastard menald, bred from a menald buck and fallow doe, are within the act. (2 E. P. C. 609. Heath’s case, Sarum, March, 1801.)

It has also been held that so much of the clause of 9 Geo. 1. as relates to the unlawful hunting, wounding, killing, destroying, or stealing any red or fallow deer, in any forest, chase, or inclosed places where deer have been or shall be usually kept, (not being armed and disguised,) was holden by all the judges to be repealed by st. 16 Geo. 3. c. 30. which punishes the first offence with pecuniary forfeiture. (Rex v. Davis, Mich. 1783.) Consonant to the above construction, it has been decided that no indictment lay for deer stealing in the first instance, although it be laid that the deer was reclaimed. (Heath’s case, *supra*.)

C. C. L. 1.306.

But since this determination the law has been altered, and the first offence of deer stealing again made a felony; for, by st. 42 Geo. 3. c. 107. entitled “An act more effectually to prevent the stealing of deer,” reciting that “whereas it is expedient to make some further provision for preventing the stealing of deer and the punishment of deer stealers,” it is enacted, “That, from and after the passing of this act, if any person or persons shall wilfully course or hunt, or take in any slip, noose, toil, or snare, or kill, wound, or destroy, or shoot at or otherwise attempt to kill, wound, or destroy, or shall carry away any red or fallow deer, kept or being in the inclosed part of any forest, chase, purlieu, or ancient walk, or any inclosed park, paddock, wood, or other inclosed ground wherein deer are, have been, or shall be usually kept, without the consent of the owner of such deer, or without being otherwise duly authorized, or shall knowingly be aiding, abetting, or assisting therein or thereunto, every person so wilfully offending as aforesaid,



"aforesaid, in any of the cases above mentioned, shall be deemed  
 "and taken to be guilty of felony, and being lawfully convicted  
 "thereof upon indictment, shall be adjudged to be transported  
 "for the term of seven years."

By s. 2. "If the same offence be committed in the *uninclosed*  
 "part of any forest, chase, &c. every person so offending shall,  
 "for every such act, and for every deer so taken or killed,  
 "wounded, destroyed, or shot at or carried away, in or from any  
 "*uninclosed* part of any forest, &c. shall forfeit and pay the sum  
 "of fifty pounds." If a keeper is guilty of these offences the  
 penalty is double; and all the provisions of 16 Geo. 3. for the  
 recovery of penalties, &c. are extended to this act.

By the 4 Geo. 4. c. 54. reciting the 9 Geo. 1. c. 22. by s. 4.  
 enacts, "That so much of the recited act of 9 Geo. 1. as ex-  
 "cludes clergy in the recited cases, &c. (being armed and dis-  
 "guised, and appearing in any inclosed place where deer have  
 "been usually kept, or killing, &c. of any red or fallow deer)  
 "shall be repealed," and then enacts, "that the persons con-  
 "victed of the offences recited, or procuring, counselling, aiding,  
 "or abetting the commission thereof, shall be liable, at the dis-  
 "cretion of the court, to be transported beyond the seas for the  
 "term of seven years, or to be imprisoned only, or to be im-  
 "prisoned and kept to hard labour in the common gaol or house  
 "of correction, for any term not exceeding three years."

The law then appears thus to stand at present. The 16 Geo.  
 3. repealed that part of the clause of 9 Geo. 1. which made  
 killing deer in inclosed ground, not being disguised, a felony,  
 and reduced the first offence to a misdemeanor. It was again  
 made felony by 42 Geo. 3. subject to seven years transportation;  
 and lastly, by 4 Geo. 4. c. 54. hunting and killing deer, though  
 disguised and armed, is punishable now by transportation or  
 imprisonment, &c. But there is this incongruity existing between  
 these statutes, that for killing deer in an inclosed part of any  
 place, by persons armed and being disguised, it is discretionary  
 in the court to sentence them to a less punishment than seven  
 years transportation; but for the minor offence of committing  
 the same act, without being disguised, the judgment (by 42 Geo.  
 3. c. 187.) is absolute for seven years transportation.

### Fish.

For the offence  
 of trespassing in  
 ponds by en-  
 deavouring to  
 take fish there-  
 in, vide 3 Edw.  
 1. c. 20.  
 2 Inst. 200.  
 Vide also  
 34 Hen. 8. c. 2.  
 where this  
 offence was  
 made felony.

† Sect. 1. By 5 Eliz. c. 21. s. 2. "Whoever shall break, cut  
 down, cut out, or destroy any head or dam of any ponds,  
 pools, moats, stagnes, stews, or several pits wherein fish are  
 or shall happen to be put in or stored withal by the owners or  
 possessors thereof; or do or shall wrongfully fish in any of  
 the said several ponds, pools, moats, stews or pits, to the intent  
 to destroy, kill, take, or steal away any of the same fish, against  
 the will of the owners, shall suffer three months imprisonment,  
 find security for his good behaviour for seven years, and make  
 compensation to the party grieved."

† Sect. 2. By 4 and 5 Will. 3. c. 23. s. 5. "No person, ex-  
 cept the owner or occupier of a fishery, shall have or keep any  
 "net,

"net, angle, leap, piche, or other engine for the taking of fish, other than the makers and sellers thereof for their better convenience in the sale of the same, and other than the owner and occupier of any river or fishery for the time being;—and the owner of any river or fishery, or his appointee, may seize, detain, and keep to his own use, all such nets, or other engines which he shall find used or laid, or in the custody of any person whatsoever, fishing in any river or fishery whatsoever, without the consent of the owner or occupier:—and any person being authorized by warrant under the hand and seal of a justice for the county or place, may search in the day-time the houses of persons prohibited to keep the same, who shall be suspected of having the same, and the same and every or any of them to seize, detain and keep to his or their own use, or otherwise to cut in pieces or destroy, as things by this act prohibited to be kept by persons of their degree.—But this shall not extend to fishermen, &c. authorized to fish in navigable rivers or waters with lawful nets, &c."

† Sect. 3. By 22 and 23 Car. 2. c. 25. s. 7. it is also enacted, "That whoever shall use any casting net, or other net whatsoever, or any angle, hair noose, trail or spear, or shall lay any wears, pots, nets, fish-hooks, or other engines, or shall take any fish by any means or device whatsoever, in any river, stew, pond, mote, or other several waters or rivers, or shall be aiding or assisting thereunto, without the consent of the owner, on conviction by confession, or the oath of one credible witness, within a month, before one justice, shall render compensation, not exceeding treble damages, and over and above, pay down immediately any sum not exceeding ten shillings, to the use of the poor, and on default by distress, shall be imprisoned, not exceeding one month, in the house of correction, unless the offender shall enter into a bond to the party injured, with one surety not exceeding ten pounds, never to offend in like manner.—Justices may seize the nets, &c. but the party may appeal to the quarter-sessions, which shall be final, unless title to any land, royalty, or fishery, is concerned therein."

† Sect. 4. By 9 Geo. 1. c. 22. "Whoever being armed with swords, fire-arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised, shall unlawfully steal or take any fish out of any river or pond, or shall forcibly rescue any person in lawful custody for the same, or shall by gift or promise of money or other reward, procure any of the king's subjects to join him or them in any such unlawful act, shall suffer death without clergy." (1)

† Sect. 5. By 5 Geo. 3. c. 14. IT IS RECITED, "That the several laws in being for the preservation of the fish in rivers, ponds, pools, moats, stews, and other waters, are by experience found to be ineffectual to deter divers loose, idle, and disorderly persons from stealing, taking away, or destroying, the fish therein bred

(1) This is one of the offences to which clergy is restored by 4 Geo. 4. and seven years transportation, or three years imprisonment and hard labour, in the discretion of the court, substituted.

Persons convicted of stealing or destroying fish, &c. are to be transported for seven years.

bred and preserved;" and therefore ENACTED, "That in case any person or persons shall enter into any park or paddock fenced in and inclosed, or into any garden, orchard, or yard, adjoining or belonging to any dwelling-house, in or through which park or paddock, garden, orchard or yard, any river or stream of water shall run or be, or wherein shall be any river, stream, pond, pool, moat, stew, or other water, and by any ways, means, or device whatsoever, shall steal, take, kill, or destroy, any fish bred, kept, or preserved, in any such river or stream, pond, pool, moat, stew, or other water aforesaid, without the consent of the owner or owners thereof; or shall be aiding or assisting in the stealing, taking, killing, or destroying any such fish as aforesaid; or shall receive or buy any such fish, knowing the same to be so stolen or taken as aforesaid; and being thereof indicted within six calendar months next after such offence or offences shall have been committed, before any judge or justices of gaol-delivery for the county wherein such park or paddock, garden, orchard, or yard, shall be, and shall on such indictment be, by verdict, or his or their own confession or confessions, convicted of any such offence or offences as aforesaid; the person or persons so convicted shall be transported for seven years."

Any offender convicting his accomplices intitled to pardon.

† Sect. 6. By 5 Geo. 3. c. 14. s. 2. it is recited, "That for the more easy and speedy apprehending and convicting of such person or persons as shall be guilty of any of the offences before-mentioned," and further enacted, "That in case any person or persons shall at any time commit or be guilty of any such offence or offences as are herein-before mentioned, and shall surrender himself to any one of his majesty's justices of the peace in and for the county where such offence or offences shall have been committed; or being apprehended and taken, or in custody for such offence or offences, or on any other account, and shall voluntarily make a full confession thereof, and a true discovery, upon oath, of the person or persons who was or were his accomplice or accomplices in any of the said offences, so as such accomplice or accomplices may be apprehended and taken, and shall, on the trial of such accomplice or accomplices, give such evidence of such offence or offences, as shall be sufficient to convict such accomplice or accomplices thereof; such person making such confession and discovery, and giving such evidence as aforesaid, shall, by virtue of this act, be pardoned, acquitted, and discharged of and from the offence or offences so by him confessed as aforesaid."

Persons convicted of taking or destroying, &c.

† Sect. 7. By 5 Geo. 3. c. 14. s. 3. it is further enacted, "That in case any person or persons shall take, kill, or destroy, or attempt to take, kill, or destroy, any fish, in any river or stream, pond, pool, or other water (not being in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling-house, but shall be in any other inclosed ground which shall be private property), every such person, being lawfully convicted thereof by the oath of one or more credible witness or witnesses, shall forfeit and pay, for every such offence, the sum of five pounds, to the owner or owners

forfeit to the owner of the fishery, &c.

"owners of the fishery of such river or stream of water, or of such pond, pool, moat, or other water: And it shall and may be lawful to and for any one or more of his majesty's justices of the peace of the county, division, riding, or place, where such last-mentioned offence or offences shall be committed, upon complaint made to him or them upon oath, against any person or persons, for any such last-mentioned offence or offences, to issue his or their warrant or warrants to bring the person or persons so complained of before him or them; and if the person or persons so complained of shall be convicted of any of the said offences last-mentioned, before such justice or justices, or any other of his majesty's justices of the same county, division, riding, or place aforesaid, by the oath or oaths of one or more credible witness or witnesses, which oath such justice or justices are hereby authorized to administer, or by his or their own confession; then, and in such case, the party so convicted shall, immediately after such conviction, pay the said penalty of five pounds, hereby before imposed for the offence or offences aforesaid, to such justice or justices before whom he shall be so convicted, for the use of such person or persons as the same is hereby appointed to be forfeited and paid unto; and, in default thereof, shall be committed by such justice or justices to the house of correction, for any time not exceeding six months, unless the money forfeited shall be sooner paid."

† Sect. 8. By 5 Geo. 3. c. 14. s. 4. it is provided, "That it shall and may be lawful to and for such owner or owners of the fishery of such river or stream of water, or of such pond, pool, or other water, wherein any such offence or offences last-mentioned shall be committed as aforesaid, to sue and prosecute for, and recover the said sum of five pounds, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*; and in such action or suit, no essoign, wager of law, or more than one imparlance, shall be allowed; provided that such action or suit be brought, or commenced, within six calendar months next after such offence or offences shall have been committed."

† Sect. 9. By 5 Geo. 3. c. 14. s. 5. it is also provided, "That nothing in this act shall extend, or be construed to extend, to subject or make liable any person or persons to the penalties of this act, who shall fish, take, or kill, and carry away, any fish, in any river or stream of water, pond, pool, or other water, wherein such person or persons shall have a just right or claim to take, kill, or carry away, any such fish."

An indictment against John H. on this statute, charged him with unlawfully entering a garden of A. T. adjoining and belonging to her dwelling-house, in which was a certain pond, used for keeping fish, and, without A. T.'s consent, with a certain net stealing and taking out of the said pond a certain quantity of live gold and silver fish, *of the goods and chattels of the said A. T.*, against the form of the statute, &c.: on evidence, it appeared, that the pond adjoined the house, and was about twenty yards

in length and ten in breadth: it was objected, that fish in an open pond were *feræ naturæ*, unreclaimed, and not the property of any particular person, as they were laid to be in the indictment. In answer to which, a distinction was taken on the part of the Crown, that this was not an indictment for a felony, but only for a misdemeanor on the statute, though the punishment directed was transportation. In Easter Term, 1781, all the judges held the indictment good, the case being fully brought within the st. of 5 Geo. 3. without the allegation that the fish were the goods and chattels of any person; and therefore that part of the indictment was surplusage. But if the indictment had been at common law, for felony, it was the opinion of some that it should have described what sort of a pond it was, that it might appear on the face of the indictment, that taking fish out of such a pond was felony. It is observed by Mr. East, that the statute uses the word "steal," which seems to imply that the legislature meant to make the offence a larceny—if so, the indictment would not have been good without laying the fish to be the property of some person. (See E. P. C. 612.)

Kinnersley v.  
Orpe,  
Doug. 517.

† Sect. 10. It hath been determined that a person who fishes in a fishery belonging to another, but to which he has a claim, for the purpose of giving occasion to an action in order to try the right, is not liable to a penalty under the statute above recited.

### *Oysters.*

By statute 31 Geo. 3. c. 51. it is enacted, "That if any person or persons shall, at any time from and after 1st of August, 1791, with or by means of any net, trawl, dredge, or other instrument or engine whatsoever, take or catch any oysters or oyster brood, within the limits of any oyster fishery of this kingdom, or shall dredge for oysters or oyster brood, or use any oyster dredge, or other net, instrument, or engine whatsoever, within the limits of any such fishery, for the purpose of taking or catching oysters or oyster brood, although no oysters or oyster brood shall be actually taken; or shall with any net, instrument, or engine, drag upon the ground or soil of any such fishery; all and every such person and persons (other than and except such persons as shall be the owners, lessces, or occupiers of such fishery, or shall be otherwise lawfully entitled to take or catch oysters therein) shall be deemed and taken to be guilty of an offence and misdemeanor, and shall and may be prosecuted for the same by indictment at the assizes, or general quarter-sessions of the peace, to be holden in and for the county, riding, or division in which such fishery shall lie; and the justices in sessions are hereby authorized and required to hear and determine all and every such offence and offences; and such person or persons being lawfully convicted by verdict, or by his or their own confession, shall and may be punished for any of the said offences by fine and imprisonment, or either of them, as the court before whom such person or persons shall be so convicted shall think proper, such fine not to exceed twenty pounds, or be less than

" forty

" forty shillings, and such imprisonment not to be for more than three months, or less than one month."

By 48 Geo. 3. c. 144. intituled, An act for the more effectual protection of oyster fisheries and the brood of oysters, in England; reciting, " that the provisions of the statute 31 Geo. 3. c. 51. have been found inadequate to the protection of the oyster fisheries of this kingdom; and that doubts have arisen, since the passing of the said act, whether the taking oysters or oyster brood from any oyster bed or laying, or from any oyster fishery, can, under any circumstances, be deemed felony, and punishable as such; and that it is therefore expedient and necessary that more effectual provision should be made for the protection of the oyster fisheries, and for removing such doubts as aforesaid;" and then declares and enacts, " that every person who shall at any time, after the 1st of August, 1808, knowingly and wilfully steal, take, and carry away any oysters or oyster brood, from any oyster bed, or oyster laying, or oyster fishing, being the property of any person or persons, or body or bodies politic or corporate, and sufficiently marked out as such, shall be deemed guilty of felony, and shall and may be transported for any term not exceeding seven years, or be imprisoned and kept to hard labour in any common gaol or house of correction, or penitentiary house, or imprisoned only, for any term not exceeding three years, as the court, before whom any such person shall be convicted, may adjudge."

By the last of these statutes the actual taking of oysters is a felony, and by the 31 Geo. 3. the *attempt* to take them, though none be actually taken, is a misdemeanor.

In order also to obviate the difficulty of laying a venue, when it is uncertain in what parish the oyster-lay is situated, and when it is on the borders of a county, it is enacted, by s. 3. " that it shall be sufficient in any individual under this or the former act, 31 Geo. 3. to describe, either by name or otherwise, the bed, laying or fishery in which the offence shall have been committed, without stating the same to be in any particular parish;" and when it is on the border of a county it may be stated to be in the county where the indictment is found, it being either in that county, or the adjoining county.

*Things of no intrinsic Value at Common Law, Choses in Action, &c.*

Larceny at common law could not be committed of goods which had not some worth in themselves, and did not derive their value from relationship to some other; thus, bonds, bills, notes, and securities for money, *per se* were of no value, and not the subjects of larceny. To remedy this inconvenience,

† Sect. 1. By 2 Geo. 2. c. 25. s. 3. it is enacted, " That if any person, or persons shall steal or take by robbery any exchequer orders or tallies, or other orders, intitling any other person or persons to any annuity or share in any parliamentary fund, or any exchequer bills, bank notes, *South-Sea* bonds, *East India* bonds, dividend warrants of the bank, *South-Sea* company, *East India* company, or any other company, society, or corpora-

To steal orders, tallies, &c. felony.

"ration, bills of exchange, navy bills or debentures, goldsmiths' notes for payment of money, or other bonds or warrants, bills, or promissory notes for the payment of any money, being the property of any other person or persons, or of any corporation, notwithstanding any of the said particulars are termed in law a *chose in action*, it shall be deemed and construed to be felony, of the same nature and in the same degree, and with or without the benefit of clergy, in the same manner as it would have been, if the offender had stolen, or taken by robbery, any other goods of like value with the money due on such orders, tallies, bills, bonds, warrants, debentures, or notes, or secured thereby, and remaining unsatisfied; and such offender shall suffer such punishment as he or she should or might have done, if he or she had stolen other goods of the like value with the monies due on such orders, tallies, bonds, bills, warrants, debentures, or notes respectively, or secured thereby, and remaining unsatisfied; any law to the contrary thereof in any wise used notwithstanding."

Not to extend to  
Scotland.

† *Sect. 2.* By 2 Geo. 2. c. 25. s. 4. it is provided, "That nothing in this act contained shall extend or be construed to extend to that part of *Great Britain* called *Scotland*."

Not to corrupt  
blood.

† *Sect. 3.* By 2 Geo. 2. c. 25. s. 5. it is further provided, "That no attainder for any offence hereby made felony, shall make or work any corruption of blood, loss of dower, or disherison of heirs."

Hassell's case,  
Cases C. L. 5.

† *Sect. 4.* It has been ruled upon debate, that although the statute use the plural number, as "exchequer orders, tallies, exchequer bills, bank notes, *South Sea* bonds, *East India* bonds, dividend warrants, &c." yet a person may be guilty of stealing only *one* of the several articles it enumerates, as one bank note, &c.; for although the words are plural, yet the statute says, "whoever shall feloniously steal *any* exchequer orders, tallies, &c. notwithstanding *any* of those particulars may be termed in law a *chose in action*;" which plainly shews that it was the intention of the legislature to make the stealing of *one chose in action* felony; and it would be absurd to say, that the legislature intended to make it felony to steal *two* exchequer orders, bank notes, &c. of five pounds each, and yet that it should not be felony to steal *one* of ten thousand pounds.

At a conference of the judges in East. T. 1791, Nares, J. mentioned that a person had been convicted before him for stealing privately from the person, a note of the Bristol bank, signed by one of the partners and payable to the prosecutor *or order*, but which was not endorsed, all the judges held this a capital felony under the stat. 2 Geo. 2. c. 25. and that the fact of its not being endorsed was immaterial. 2 E. P. C. 598.

Maria Theresa Phipoe was indicted on the stat. of 2 Geo. 2. c. 25. for robbing John Courtois in a dwelling-house, of a promissory note value 2,000*l.* signed by J. Courtois, against the statute. In fact, the prisoner inveigled the prosecutor into a house and then produced

produced the stamp, upon which she compelled the prosecutor to make the note in question under menaces of death.

There was a diversity of opinions among the judges in this case. Nine held that this was not an offence within the statute.—Lord Kenyon and some others thought that the statute was meant to protect existing securities, of value in the hands of the holders, whereas this note was of no value in the hands of Courtois, who was the maker himself. Another diversity of opinion was as to whether Courtois ever himself had any *possession* of the note; some thought he had a momentary possession sufficient to make the taking of it from him a larceny; others thought that the whole was one continued act, and that the note was created and procured by duress and not by stealing.

It is also upon this principle, of being of no value, that things of a base nature are not the subject of larceny, though reclaimed; for, the wild animal when reclaimed, or dead, must be fit for the food of man. Thus ferrets, though reclaimed, and being a useful animal in the destruction of vermin, is not the subject of larceny, as was determined in the case of one Searing convicted at the Hereford Lent Assizes in 1818, the judges having, upon the case reserved, held the conviction wrong.

The legislature have made exceptions with respect to hawks and dogs—To hawks, by 37 Ed. 3. c. 19. and to dogs, by 10 Geo. 3. c. 18. the stealing of which is punishable by summary conviction before two justices. It seems to be admitted that a swarm of bees may be the subject of larceny. *Tibbs v. Smith*, T. Raymond, 33.

#### *Chattels under peculiar Sanctions.*

The legislature, in many cases, has considered the crime of larceny to be aggravated by concomitant circumstances; thus, chattels in a house, shop, warehouse, ship, &c. it has considered to be under peculiar protection *ratione loci*, and has guarded them by peculiar sanctions, which, for the most part, is by ousting the offender of his clergy. There are also some peculiar chattels to which it has extended its special protection, as—

1st. Horses—2d. Sheep and other cattle—3d. Letters—4th. Naval and Military Stores.

#### 1st.—*Horses.*

† *Sect. 1.* By 1 Edw. 6. c. 12. s. 10. "No person or persons that shall be in due form of law attainted or convicted for felonious stealing of horses, geldings, or mares, shall be admitted to have or enjoy the privilege or benefit of his clergy."

† *Sect. 2.* But it was doubted whether the legislature intended by this statute to deprive those of clergy who stole only one horse, mare, or gelding, and therefore by 2 and 3 of Edw. 6. c. 33. "All and singular person and persons feloniously taking or stealing any horse, gelding, or mare, shall be put from clergy, in like manner and form as though he or they had been indicted  
"or

Dyer, 99.  
2 Hale, 364.  
Cases C. L. 5.



“ or appealed for felonious stealing of two horses, two geldings,  
“ or two mares of any other, and thereupon found guilty.”

† *Sect. 3.* By 31 Eliz. c. 12. s. 5. it is enacted, “ That not only  
“ all accessaries before such felony done, but also all accessaries  
“ after such felony, shall be deprived and put from all benefit of  
“ their clergy, as the principal by statute heretofore made, is, or  
“ ought to be.”

Foster's Crown  
Law, 372, 373.

† *Sect. 4.* It was agreed by all the judges, at a conference in  
Easter Term, in the second of Queen Anne, that this statute  
extends only to such persons as were, in judgment of law, acces-  
saries at the time the act was made, namely, accessaries at com-  
mon law; not to such as are made accessaries by subsequent  
statutes: and therefore a person knowingly receiving a *stolen*  
*horse*, is not ousted of his clergy by this statute; but he is pu-  
nishable as a receiver of stolen goods by 3 and 4 Will. and  
Mary, c. 9.

#### 2d.—*Sheep and other Cattle.* \*

† *Sect. 1.* By 14 Geo. 2. c. 6. “ If any person or persons shall,  
“ at any time, feloniously drive away, or in any other manner fe-  
“ loniously steal one or more sheep, or other cattle, of any other  
“ person or persons whatsoever, or shall wilfully kill one or more  
“ sheep or other cattle of any other person or persons whatsoever,  
“ with a felonious intent to steal the whole carcase or carcasses,  
“ or any part or parts of the carcase or carcasses of any one or  
“ more sheep or other cattle that shall be so killed, or shall assist  
“ or aid any person or persons to commit any such offence or of-  
“ fences; then the person or persons guilty of any such offence  
“ shall be adjudged guilty of felony, and shall suffer death as in  
“ cases of felony, without benefit of clergy.”

1 Com. 88.

† *Sect. 2.* But as all penal statutes must be construed strictly,  
these general words, “ *or other cattle*,” were looked upon by the  
judges as much too loose to create a capital offence, and the act  
was held to extend to sheep only; and therefore by 15 Geo. 2.  
c. 34. it is declared, “ That the above act was meant and in-  
“ tended, and shall be construed, deemed, and taken to extend to  
“ any bull, cow, ox, steer, bullock, heifer, calf, and lamb, as well as  
“ sheep, and to no other cattle whatsoever.”

Cooke's case,  
Cases in Cro.  
Law, 99.

† *Sect. 3.* It hath been determined upon this statute, that the  
word “ *heifer* ” is used in the act in contradistinction to the word  
“ *cow* ;” and therefore an indictment for stealing a *cow* is not sup-  
ported by evidence that the animal stolen was a beast of the ox  
kind, called a *heifer*, never having had a calf.

#### 3d.—*Letters.*

† *Sect. 1.* By 5 Geo. 3. c. 25. s. 18. and 7 Geo. 3. c. 50. s. 2.  
it is enacted, “ That if any person or persons whatsoever shall  
“ rob any mail or mails, in which letters are sent or conveyed by  
“ the post, of any letter or letters, packet or packets, bag or mail  
“ of letters; or shall steal and take from or out of any such mail  
“ or mails, or from or out of any bag or bags of letters, sent or  
“ conveyed by the post, or from or out of any post-office, or house  
“ or place for the receipt or delivery of letters or packets sent or  
“ to

Persons who  
shall rob the  
mail, &c. shall  
suffer death.

“ to be sent by the post, any letter or letters, packet or packets; although such robbery, stealing, or taking, shall not appear, or be proved, to be a taking from the person, or upon the king’s highway, or to be a robbery committed in any dwelling-house, or any coach-house, stable, barn, or any out-house belonging to a dwelling-house; and although it should not appear that any person or persons were put in fear by such robbery, stealing, or taking; yet such offender or offenders, being thereof convicted as aforesaid, shall nevertheless respectively be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy.” (1)

4th.—*Military and Naval Stores.* (2)

† *Sect. 1.* By 31 Eliz. c. 4. “ If any person or persons, having the charge or custody of any armour, ordnance, munition, shot, powder, or habiliments of war of the queen’s majesty, her heirs or successors, or of any victuals provided for the victualling of any soldiers, gunners, mariners, or pioneers, shall, for any lucre or gain, or wittingly, advisedly, and of purpose to hinder or impeach her majesty’s service, embezzle, purloin, or convey away any of the said armour, ordnance, munition, shot, or powder, habiliments of war, or victuals, to the value of twenty shillings at one or several times; then every such offence shall be judged felony, and the offender or offenders therein tried, proceeded on, and suffer as in case of felony.”

† *Sect. 2.* But by 31 Eliz. c. 4. s. 2. it is provided, “ That none shall be impeached for any offence against this statute, unless the same impeachment be prosecuted or begun within the year next after the offence done.”

† *Sect. 3.* By 31 Eliz. c. 4. s. 2. it is also provided, “ That this act nor any thing therein contained, nor any attainder or attainders of any person or persons for any offence made felony by this act, shall create any forfeiture of tenements or hereditaments any longer than during his or their life or lives; or make any corruption of blood, or loss of dower.”

† *Sect. 4.* But by 22 Car. 2. c. 5. reciting, that many persons were the more emboldened to commit the offences created by 31 Eliz. c. 4. in respect that, in those cases, the benefit of clergy is allowed by law, IT IS ENACTED, “ That no person or persons who shall be indicted for any offence committed against the said statute of 31 Eliz. c. 4. or shall feloniously steal or embezzle any of his majesty’s sails, cordage, or any other his majesty’s naval stores, to the value of *twenty shillings*, and be thereupon found guilty, shall be admitted to have the benefit of his or their clergy; (3) but utterly be excluded thereof, &c.”

*Chattels under peculiar Sanctions Ratione Loci.*

The principal sanction is the dwelling-house, and it has been considered by the legislature as a great aggravation of the offence of

(1) By 52 Geo. 3. c. 142. s. 3. the above provisions are in substance re-enacted, and such offences by the later statute may be “ tried and determined either in the county where the offence was committed, or where the party shall or may

“ be apprehended.” (See post, “ Offences against the Revenue.”)

(2) See further respecting Public Stores, post, tit. *Receivers.*

(3) Clergy restored by 4 Geo. 4. c. 54.

of larceny, that the sanctity of the dwelling-house should be violated, by committing the crime therein; accordingly a variety of statutes have been passed upon this subject, which are rather complicated, but may be reduced to this general division, — Larcenies committed in the Dwelling-house and other places, unaccompanied by Force; and Larcenies accompanied by Force in the Dwelling-house and other places, which latter is considered as Robbery.

With respect to the first class, of larcenies in the dwelling-house, &c. unaccompanied by force, clergy is ousted in the following cases.—

*Larceny from the Dwelling-house to the amount of Forty Shillings.*

† *Sect. 1.* By 12 Ann. st. 1. c. 7. it is enacted, “ That all and “ every person or persons that shall feloniously steal any money, “ goods or chattels, wares or merchandizes, of the value of *forty* “ *shillings*, or more, being in any dwelling-house, or out-house “ thereunto belonging, although such house or out-house be not “ actually broken by such offender, and although the owner of “ such goods, or any other person or persons, be, or be not, “ in such house or out-house, or shall assist or aid any person or “ persons to commit any such offence, shall be absolutely de- “ barred of and from the benefit of clergy.”

† *Sect. 2.* But by 12 Ann. c. 7. s. 2. it is provided, “ That “ nothing in this act shall extend to *apprentices* under the age of “ fifteen years who shall rob their masters as aforesaid.”

Upon this statute the following decisions have been made.

Overard's Case,  
Cases Cro.  
Law, 83.

† *Sect. 3.* That if a person be indicted for robbery in the house, or burglary and stealing of goods, and the evidence should prove a larceny committed to the amount of forty shillings, he may be acquitted of the robbery and burglary, and found guilty on this statute, of stealing in the dwelling-house to the amount of forty shillings, although there is no special count on the statute in the indictment; but it must appear that the larceny was to this amount at one and the same time.

Petrie's Case,  
Cases Cro.  
Law, 239.

Thompson's  
Case, Cases  
C. L. 277.  
Case of Ann  
Gould, O. B.  
Jan. Sess. 1780.

† *Sect. 4.* It has been held, that this statute does not deprive a person of clergy for stealing in his own house the property of another person, to the amount of forty shillings; and if a wife steal the property of another to that amount in the house of her husband, she shall have her clergy.

James Camp-  
bell's Case,  
O. B. Jan.  
Sess. 1792.  
*coram* EYRE,  
Chief Baron.

† *Sect. 5.* So also where a lodger stole a *bank note* in the room hired by himself, and the indictment charged it to be in the dwelling-house of the landlord, the prisoner was allowed the benefit of his clergy, for it was a stealing in his own apartments, and not in the house of another.

Major Reynell's  
Case, Old Bai-  
ley, January  
Sessions, 1792.

† *Sect. 6.* It has also been decided, that where the property stolen is taken from *the person* of the possessor, though taken in the house of another, it is not within the statute: thus where the mistress of a lodging-house sent a bank note by her servant to a lodger in the first floor, to change, and the lodger, under pretence of

of going to his banker's to get cash, went away with it, the prisoner was held guilty of the simple larceny only: so also, that where a person, in possession of a large sum of money, was deluded by a ring-dropper to go into a public-house to share the value of the ring, and there induced to lay his money on the table, which the ring-dropper immediately took up and went away, it was decided, upon a case reserved for the opinion of the twelve judges, that the ring-dropper having obtained the money from the person of the prosecutor, it was only a single felony, and not a stealing in the dwelling-house within the statute 12 Ann. c. 7.

The case of Edward Owen, O. B. July Sess. 1792, on a case reserved by BULLER, Justice.

† Sect. 7. And it has been ruled, that *bank notes*, and of course all those other securities for money, which were denominated *choses in action* at common law, are not to be considered within the meaning of this statute; for, although the statute 2 Geo. 2. c. 25. enacts, that the stealing of such things "shall be deemed" and construed to be felony of the same nature, and the same "degree, and with or without the benefit of clergy, in the same manner as it would have been if the offender had stolen or "taken by robbery, any other goods of like value with the money "due on such securities or secured thereby;" yet as the legislature could not, in the twelfth year of the reign of Queen Anne, have in contemplation a species of property which it was not a felony to steal until the second year of George the second, it is impossible to comprehend them under the word "*money*," and it has been decided (a), that they cannot be considered as "*goods or chattels, wares or merchandizes*."

Dunmow's Case, Essex Lent Assizes, 1793, coram HOTHAM, Baron.

(a) Morris's Case, Cases C. L. 368.

† Sect. 8. It has also been ruled, that an indictment on this statute must state the name of the owner in whose house the larceny was committed, and that if the name be not truly stated, it is fatal to the capital part of the charge.

Oct. Sess. 1785. M'Cabe's Case, O. B. May Sess. 1785.

White's Case, Cases C. L. 216. Woodward's Case, O. B.

† Sect. 9. It seems also, that if a larceny be committed in the General Post-Office to the amount of forty shillings, the indictment, in order to oust the offender of larceny under the 12 Ann. c. 7. may lay it to be the dwelling-house of the Postmaster-General. But *quare*.

See Hassell's Case, Cases Cro. Law, 21.

#### *Larceny from a Shop or Warehouse privately to the amount of Fifteen Pounds.*

† Sect. 1. By 10 and 11 Will. 3. c. 23. it is enacted, "That all "and every person or persons that shall, at any time or times, by "night, or in the day-time, in any shop, warehouse, coach-house, "or stable, privately and feloniously steal any goods, wares, or "merchandize, being of the value of *five shillings*, (increased to "fifteen pounds, by st. 1 Geo. 4. c. 117.) or more, (although "such shop, warehouse, coach-house, or stable, be not actually "broke open by such offender or offenders, and although the "owners of such goods, or any other person or persons be, or "be not, in such shop, warehouse, coach-house, or stable, to be "put in fear,) or shall assist, hire, or command any person or "persons to commit such offence, shall be absolutely debarred "and excluded of and from the benefit of clergy," &c.(1)

(1) Clergy restored by 4 Geo. 4. c. 53.

In

In the construction of this statute, the following particulars seem most remarkable.

† *Sect. 2.* It seems, that it is not necessary, to constitute the offence of *privately stealing* described by this act, that the shop, warehouse, coach-house, or stable, from which the goods are stolen, should be adjoining, or belonging to, and used with any dwelling-house; and therefore, if goods be stolen from a shop or warehouse, but not privately, the offender cannot be ousted of his clergy, unless the indictment allege that such shop or warehouse is adjoining to a dwelling-house, pursuant to the statute 3 and 4 Will. and Mary, c. 9.

Jonathan  
Wild's Case,  
Old Bailey,  
May Sess.  
1725.

† *Sect. 3.* It has been held, that an accessory before the fact, that is, a person who is not in the shop, warehouse, coach-house, or stable, at the time the goods are stolen, but who waits at a distance to receive the goods, is not within this statute, and yet the words are, that whoever shall "assist, hire, or command" another to commit this offence, shall be deprived of clergy."

Case of Ann  
Sheldon and  
Mary Williams,  
Old Bailey,  
June Sess. 1785.

† *Sect. 4.* It is certain, however, that if two or more persons be together in the shop, warehouse, coach-house, or stable, at the time the goods are privately stolen, aiding, and assisting each other to commit the felony, they are all equally guilty.

Mill's case,  
Cases Cro.  
Law, 43.  
1 Peer Wms.  
267.  
2 Peer Wms.  
112.

† *Sect. 5.* It is settled, that the stealing of *money* privately from a shop, warehouse, coach-house, or stable, is not within the statute, for the words are, "goods, wares, and merchandizes;" and it has been decided in a variety of cases, that these words do not include money, either in *specie* or in bank notes.

Cartwright's  
case, O. B.  
1726. *coram*  
RAYMOND,  
Chief Justice  
Williams's  
case, Croydon  
Sum. Assize, 1785, *coram* EYRE, Chief Baron. Foster's Crown Law, 79.

† *Sect. 6.* It has also been decided, that if it appear on evidence, that the offender broke open the shop, warehouse, coach-house, or stable, from which the goods are charged to have been privately stolen, he shall not be ousted of his clergy; for when any degree of force is used to obtain the goods, it excludes the idea of *privately stealing*.

Charlotte  
Smith's case,  
O. B. Jan. Sess.  
1784, *coram*  
HEATH,  
Justice.  
Rex. v. Hugh  
Graham, Feb.  
Sess. 1785,  
*coram* GOULD,  
Justice. The case of Maxey and Hide, Old Bailey, Feb. Sess. 1784, *coram* PERRY, Baron, and  
BULLER, Justice.

† *Sect. 7.* It is also the common practice of the court, on the trial of an indictment for this offence, to allow the prisoner the benefit of his clergy, if it appear that he was seen by the prosecutor, his servants, or agents, to take the goods mentioned in the indictment; and the slightest perception of the fact seems sufficient; even a suspicion that the prisoner was about to take the goods, has been held enough, for if the taking is in any degree visible, it cannot be *privately stealing*.

By FOSTER,  
Justice.  
Fost. C. L. 78.

† *Sect. 8.* It is said, that the goods, wares, and merchandizes, must be such as are usually exposed to sale in the shop or warehouse, and not any other valuable thing which may happen to be put there; and though coach-houses and stables are not places for sale, yet the goods should be such as are usually lodged in those places.

John Howard's  
case, Foster,  
C. L. 77.

† *Sect. 9.* Accordingly it hath been ruled, that a common ware-  
house

house by the water-side, where merchants usually lodge goods intended for exportation, until they shall have an opportunity of putting them on board a ship, is not within the meaning of this statute; for that by the word "*warehouses*" in the statute is meant not mere *repositories* for goods, but such places where merchants and other traders keep their goods for sale, in the nature of shops, and whither customers go to view them,

† *Sect. 10.* And it has been doubted, whether the warehouse of a *Blackwell-hall-factor*, who receives his goods by the bale from the manufacturing clothiers in the country, and deposits each piece, tied up in brown paper, as taken out of the bale, upon shelves, but never exposes them to sale in the warehouse windows, or at the door, which is generally shut and fastened by a latch, and only sells wholesale by the piece thus tied up, upon commission, both for exportation and home consumption, is a warehouse within the meaning of the act.

Godfrey's case, Old Bailey, Dec. Sess. 1783. Cases C. L. 235.

† *Sect. 11.* Also it has been ruled, that if a watchmaker receive the watch of a customer to repair, and hang it in his show-glass until it is fetched away by the owner, his shop is not, as to watches so situated, a *shop* within the meaning of the statute, but a mere *repository*, where the watch was kept for the owner, and not exposed to sale by the watch-maker.

Stone's Case, Old Bailey, July Sess. 1784. Cases Cro. Law, 274.

† *Sect. 12.* So also, where a shirt was left by a customer at the shop of a tradesman, in order that the master of the shop might send it to a sempstress to be mended, but was privately stolen before it was sent, it was held, that this was not a case within the statute, which was made to preserve such goods as are usually in the shop by way of trade, and not such as are casually left there.

Anonymous, Old Bailey, April Sess. 9 Geo. 1. 8 Mod. 165.

† *Sect. 13.* So also, where a coachman's box-coat was hung up in the stables, and was privately stolen while the coachman went into the house to receive his wages, it was held, that this was not a case within the statute, for that a coachman's livery great-coat is not the usual furniture of stables, and the statute only extends to such articles as are proper to be kept therein, such as bridles, saddles, horse-cloths, &c.

Case of John Scars, Old Bailey, Feb. Sess. 1785.

† *Sect. 14.* So also, it has been held, that the property must be taken in a shop, warehouse, coach-house, or stable; for where a chariot stood under a gateway which was used as a shed, in the yard belonging to a coach-house, and the glasses of the chariot, thus standing, were privately stolen, it was held not within the statute.

John Archer's case, Old Bailey, May Session, 1784, coram MR. SERJEANT ADAIR, Recorder.

### *Larceny from Church or Chapel.*

† *Sect. 1.* By 1 Edw. 6. c. 12. s. 10. "No person or persons that shall be attainted or convicted of felonious taking of any goods out of any parish church, or other church or chapel, shall be admitted to have and enjoy the privilege or benefit of his clergy or sanctuary, but shall be put from the same."

† *Sect. 2.* It is said, that the crime of sacrilege was not deprived of the benefit of clergy by the common law; at least, it was allowed after the statute *de Clero*, 25 Edw. 3. c. 4. unless the ordinary refused the offender.

2 Hale, 333. 26 Assize, 27. S. P. C. 123.

† *Sect.*

2 Hale, 366.

† *Sect. 3.* It seems to be also agreed, that the statute 4 and 5 Philip and Mary, c. 4. which takes away clergy from robbing of any dwelling-house, doth not extend to robbing of churches or chapels.

1 Hale, 518.

† *Sect. 4.* But it is certain that the above statute of 1 Edw. 6. c. 12. ousts sacrilege of clergy in all cases except that of challenging above twenty, which defect is supplied by the statute 3 and 4 Will. and Mary, c. 9.

*Larceny upon Navigable Rivers.*

† *Sect. 1.* By 24 Geo. 2. c. 45. "All and every person or persons that shall at any time steal any goods, wares, or merchandize, of the value of forty shillings, in any ship, barge, lighter, boat, or other vessel or craft, upon any navigable river, or in any port of entry or discharge, or in any creek belonging to any navigable river, port of entry or discharge, within the kingdom of Great Britain; or shall feloniously steal any goods, wares or merchandize, of the value of forty shillings, upon any wharf or key adjacent to any navigable river, port of entry, or discharge; or shall be present, aiding, and assisting in the committing any of the offences aforesaid, being thereof convicted or attainted, or being indicted thereof shall of malice stand mute, or will not directly answer to the indictment; or shall peremptorily challenge above the number of twenty persons returned to be of the jury, shall be excluded from the benefit of clergy." (1)

And upon this statute the following determinations have been made.

Grime's case,  
Maidstone  
Lent Assizes,  
1752.  
Foster, 79.

*Sect. 2.* It has been ruled on the trial of an indictment on this statute, that *Portugal money* not made current by proclamation, but current by tacit consent, is not "goods, wares, or merchandize," within the meaning of this law.

Leigh's case,  
Cases Cro.  
Law, 2d edit.  
50.

*Sect. 3.* So also where the indictment was for stealing sundry articles of *wearing apparel*, value twenty-one shillings, and two dollars, value nine shillings, and two guineas, from on board a ship lying in the river *Thames*, it was held, that the dollars and the guineas, being money, were not within the act, and that, as the value of the wearing apparel did not amount to forty shillings, the prisoner was not ousted by this statute of the benefit of clergy.

The case of  
W. Morris,  
Cases in Cro.  
Law, 308.

† *Sect. 4.* It seems also, that the stealing of *bank notes* from on board a vessel in a navigable river would not be within this statute, because bank notes are not included within the meaning of goods and chattels, although by the statute 2 Geo. 2. c. 25. s. 3. the stealing of bank notes is made felony "of the same nature, and in the same degree, and with or without the benefit of clergy, in the same manner as it would have been if the offender had stolen, or taken away by robbery, any other goods of like value with the money due on such notes, &c."

Moses Pike's  
case, Old Bailey,  
May Session,  
1784.

† *Sect. 5.* It has also been held, that evidence of a loaded barge in navigating down the *Thames* being likely to sink, and that the bargemen,

(1) Clergy restored by 4 Geo. 4. c. 53.

bargemen, in order to avoid the danger, unloaded part of the cargo into a long boat, and carried both the barge and the boat into *Limehouse Dock*, where the boat with her lading was left aground by the efflux of the tide, and in such situation stole in the night time from her moorings, will not maintain an indictment, charging the offence to have been committed "on the navigable river *Thames*;" but perhaps it would have been sufficient if the indictment had, in the language of another part of the statute, charged the stealing from a boat "in a certain creek belonging to the navigable river *Thames*."

*Larceny from Wrecks.*

† *Sect. 1.* By 12 Ann. st. 2. c. 18. s. 5. "If any person or persons shall steal any pump belonging to any ship or vessel shipwrecked or in distress, or shall be aiding or abetting in the stealing such pump, such person or persons shall be and are hereby made guilty of felony without any benefit of his, her, or their clergy."

† *Sect. 2.* By 26 Geo. 2. c. 19. s. 1. "If any person or persons shall plunder, steal, take away or destroy any goods or merchandizes or other effects from or belonging to any ship or vessel of his majesty's subjects, or others, which shall be in distress, or which shall be wrecked, lost, stranded or cast on shore, in any part of his majesty's dominions (whether any living creature be on board such vessel or not), or any of the furniture, tackle, apparel, provisions, or part of such ship or vessel; then such person or persons so offending shall be deemed guilty of felony, and shall suffer death as in case of felony without benefit of clergy."

† *Sect. 3.* But by 26 Geo. 2. c. 19. s. 1. it is provided, "That when goods or effects of small value shall be stranded, lost, or cast on shore, and shall be stolen without circumstances of cruelty, outrage, or violence, then and in such cases it shall be lawful for any person or persons to prosecute for such offence by way of indictment for petit larceny, and the offender, being thereof lawfully convicted, shall suffer such punishment as the law in cases of petit larceny does enjoin or require."

*Larceny of Woollens from Tenter Grounds.*

† *Sect. 1.* By 22 Car. 2. c. 5. s. 3. "No person or persons who shall be indicted for felonious cutting and taking, stealing, or carrying away of any cloth or other woollen manufactures from the rack or tenter in the night-time, and be thereupon found guilty, shall be admitted to have the benefit of his or their clergy." (1)

† *Sect. 2.* But by 22 Car. 2. c. 5. s. 4. it is provided, "That it shall and may be lawful for the judges or justices of the court before whom such offender shall be arraigned and condemned, at their discretion, to grant a reprieve for the staying of execution of such offender, and to cause such offender to be transported for seven years."

† *Sect.*

(1) Clergy restored by 4 Geo. 4. c. 53.



† Sect. 3. And by 22 Car. 2. c. 5. s. 4. it is further enacted, “ That if such offender shall refuse to be so transported, or after such transportation shall return or come again into *England*, *Wales*, or *Berwick upon Tweed*, within the time aforesaid, such person shall be put to execution upon the judgment so given and pronounced against him.”

*Larceny of Linnens from Bleaching Ground.*

By stat. 51 Geo. 3. c. 41. which repeals the first sect. of 18 Geo. 2. c. 27. (by which clergy was excluded from offenders stealing linen, &c. of the value of ten shillings, from bleaching grounds,) it is enacted, “ That every person who shall feloniously steal any linen, fustian, calico, cotton cloth, or cloth worked, woven, or made of any cotton or linen yarn mixed, or any thread, linen, or cotton yarn, linen, or cotton tape, inkle, filleting laces, or any other linen, fustian, or cotton goods, or wares whatsoever, laid, placed or exposed to be printed, whitened, worked, bleached, or dried in any whitening or bleaching croft, lands, fields, or grounds, bowking house, printing house, drying house, or other building, ground, or place made use of by any calico printer, whitster, crofter, bowker, or bleacher, for printing, whitening, bowking, bleaching, or drying of the same, to the value of ten shillings; or who shall aid and assist, or wilfully or maliciously hire or procure any other person or persons to commit any such offence, or who shall buy or receive any such goods or wares so stolen, knowing the same to be stolen as aforesaid, being lawfully convicted thereof, shall be liable to be transported beyond the seas for life, or for such term, not less than seven years, as the judge before whom any such person shall be convicted shall adjudge; or shall be liable, in case the said judge shall think fit, to be imprisoned, and kept to hard labour in the common gaol, house of correction or penitentiary house, for any term not exceeding seven years.”

Upon an indictment upon the former statute 18 Geo. 2. by which the above offence was a capital felony, it appeared in evidence, that the yarn had been spread upon the ground for bleaching, but had been afterwards taken up and thrown into a heap, from which the prisoner took some of it. Thompson, B. ruled the case not within the statute, as the yarn was not necessarily left in that state. This ruling appears consonant to the general principle, that when a chattel is under peculiar sanction, *ratione loci*, that it should be in its proper deposit; so it has been questioned whether the great coat of a coachman stolen from the stable was protected by the stat. 10 & 11 Will. 3. on the ground that it is part of the necessary furniture of the stable, (*Lea's case*, 1 Leach, C. C. L. 304.) So in the above case, when the yarn was no longer in the bleach ground for the necessary manufacture of it, but was left there as a mere place of deposit, it was no longer under the protection of the statute.

*Robbery in a Dwelling-House, the Owner being therein and put in Fear.*

† Sect. 1. By 23 Hen. 8. c. 1. s. 3. “ no person or persons which shall be found guilty of robbing any person or persons “ in

" in their dwelling-houses or dwelling-place, the owner or dweller  
 " in the same house, his wife, his children, or servants, then being  
 " within and put in fear and dread by the same, shall be admitted  
 " to clergy."

† *Sect. 2.* By 4 and 5 Philip and Mary, c. 4. " Every person  
 " and persons who shall maliciously command, hire, or counsel  
 " any person or persons to do any robbery in any dwelling-house  
 " or houses, shall not have the benefit of clergy."

*Robbery in a Dwelling-House, the Family being therein, though  
 not put in Fear.*

† *Sect. 1.* By 5 and 6 Edw. 6. c. 9. " If any person or persons  
 " shall be found guilty for robbing of any person or persons in  
 " any part or parcel of their dwelling-houses or dwelling-places,  
 " the owner or dweller in the same house, or his wife, his children,  
 " or servants, being then within the same house or place where  
 " the robbery and felony is committed and done, or in any other  
 " place within the precinct of the same house or dwelling-place,  
 " the offender shall in no wise be admitted to clergy, whether the  
 " owner or dweller in the same house, his wife or children, then  
 " and there being shall be sleeping or waking."

† *Sect. 2.* It is said, that in order to oust the offender of clergy  
 under this statute, there must be such an actual breaking of the  
 house as would make a burglary if committed in the night. 2 Hale, 354.  
 Foster, 108.  
 Cases Cro. L. 354.

† *Sect. 3.* It is also said, that the indictment must run, " broke  
 " and entered the mansion-house of *J. S.* the aforesaid *J. S.* his  
 " wife and children in the same house being, &c."; but that it  
 need not state the robbery *violenter et à personâ*, but only *è domo  
 prædictâ*. 2 Hale, 354.

† *Sect. 4.* It is also said, that if a servant steal goods out of his  
 master's house in the day or night, the master, his wife and chil-  
 dren being in the house, the offender is not ousted of his clergy  
 by this statute, because there was no breaking of the house. 2 Hale, 354.

† *Sect. 5.* It is settled, that if a servant unlatch or turn the key  
 of a door in the house and steal goods out of that room, he shall  
 not be ousted of his clergy, as a stranger in such case would be,  
 for the opening of the door in this manner is within his trust, and  
 so no breaking of the house; but if a servant break open a door,  
 whether outward or inward, and steal goods, it is within the act.

† *Sect. 6.* It is certain also, that there must not only be a break-  
 ing of the house, the owner, his wife, children, or servants, being  
 within the same, but there must also be a felonious taking of goods  
 out of the house, to exclude clergy by this statute.

† *Sect. 7.* And a bare felonious taking of goods out of the  
 house, whether by night or day, without such a breaking as  
 would make burglary if done in the night, will not oust the offender  
 of clergy. 2 Hale, 355.

† *Sect. 8.* It is also said, that a stranger only being in the house  
 at the time is not sufficient, for the statute requires that " the  
 " dweller or owner, his wife, children, servants or servant, be  
 " within;" Staundf. 129.  
 2 Hale, 355.  
 4 Hawk. P. C. ch. 33.

Tomlin's Case,  
Hott. 64. But  
see post.

1 Hale, 524.

1 Hale, 508.  
524.

1 Hale, 527.

Foster, 108.

“ within ;” and therefore in such case if such sojourner be robbed without being put in fear, the offender shall have his clergy.

† Sect. 9. It is said, that if a person go into a house, the doors being open, and break open only a chest or trunk and steal goods, it is not such a robbery as is within this statute ; but that in such case if the person break open an inner door, or a counter, or cupboard fixed to the freehold, he shall be ousted of his clergy ; and yet it hath been adjudged, that the breaking open of a chest is all one as to this purpose with the breaking open of a door, though the chest be not fixed to the freehold ; and this latter resolution was by all the judges of England : but *Mr. Justice Foster* says, that “ if a moveable chest be meant, this case cannot be law ;” and that “ in capital cases, such fixtures which merely supply the “ place of chests and other ordinary utensils of household, should “ be considered in no other light than as mere moveables, par- “ taking of the nature of those utensils, and adapted to the same “ use.”

† Sect. 10. But now the benefit of clergy is taken away from robbery in general by 3 and 4 Will. and Mary, c. 9. which enacts, “ That all and every person or persons that shall rob any other “ person, or shall comfort, aid, abet, assist, counsel, hire or com- “ mand any person or persons to commit such offence, shall not “ have the benefit of clergy.”

*Robbery in a Booth or Tent, the Family being therein, though not put in Fear.*

† Sect. 1. By 5 and 6 Edw. 6. c. 9. s. 5. “ No person or per- “ sons which shall be found guilty of and for robbing any person “ or persons in any booth or tent, in any fair or market, the owner, “ his wife, his children, or servants or servant, then being within “ the same booth or tent, shall be admitted to clergy, but shall “ be excluded therefrom, and suffer death in such manner and “ form as is mentioned in 23 Hen. 8. c. 1. for robberies in dwell- “ ing-houses, the owner or dweller in the same, his wife, chil- “ dren, or servants, being then within the same, and put in fear “ and dread, without having any respect or consideration whether “ the owner or dweller in such booths or tents, his wife, children, “ or servants, being in the same booths or tents at the time of “ such robberies and felonies committed, shall be sleeping or “ waking.”

1 Hale, 524.

† Sect. 2. It hath been ruled, that the robbing of a shop, such as was formerly kept in *Westminster-Hall*, and like those which are now kept in *Exeter-Change*, is not robbing a booth or tent within the meaning of this statute.

*Robbery in a Dwelling-House, breaking the House, any Person being therein and put in Fear.*

† Sect. 1. By 1 Edw. 6. c. 12. s. 10. “ No person or persons “ that hath been attainted or convicted of breaking any house by “ day or by night, any person being then in the same house where “ the same breaking was committed, and thereby put in fear or “ dread, shall be admitted to clergy.”

† Sect.

† *Sect. 2.* It is said, that in order to oust an offender of clergy 2 Hale, 353. under this statute, there must not only in all cases be a putting in fear, but that the breaking, if by night, must appear to have been done with intention to commit a felony, and if by day, that a felony was actually committed.

† *Sect. 3.* It is also said, that if any stranger be then in the house and put in fear, it excludes from clergy, though it be not the owner or any of his family. 2 Hale, 353.

*Robbery in a Dwelling-House in the Day time, any Person being therein.*

† *Sect. 1.* By 3 Will. and Mary, c. 9. "All and every person or persons that shall rob any dwelling-house in the day-time, any person being therein, or shall comfort, aid, abet, assist, counsel, hire, or command any person or persons to commit the said offence, shall not have the benefit of his or their clergy."

*Robbery in a Dwelling-House, any Person being therein and put in Fear.*

† *Sect. 1.* By 3 Will. and Mary, c. 9. "All and every person or persons who shall feloniously take (1) away any goods or chattels being in any dwelling-house, the owner or any other person being therein, and put in fear, or shall comfort, aid, abet, assist, counsel, hire or command any person or persons to commit the said offence, shall not have the benefit of his or their clergy."

It must be stated, in the indictment under this statute, that the persons in the house were *put in fear*, otherwise the prisoner will be entitled to clergy. 2 Leach, C. C. L. 271.—E. P. C. 635.

*Robbery in a Dwelling-House, no Person being therein, and stealing to the value of Five Shillings.*

† *Sect. 1.* By 39 Eliz. c. 15. "If any person or persons shall be found guilty for the felonious taking away (2) in the day-time of any money, goods, or chattels, being of the value of five shillings, or upwards, in any dwelling-house or houses, or any part thereof, or any out-house or out-houses, belonging and used to and with any dwelling-house or houses, although no person shall be in the said house or out-house at the time of such felony committed, then such person or persons shall not be admitted to clergy."

† *Sect. 2.* It is adjudged, that accessories to this offence are not excluded from clergy by this statute. But by 3 and 4 Will. and Mary, c. 9. it is enacted, "That whoever shall comfort, aid, abet, assist, counsel, hire, or command any person or persons to break any dwelling-house, shop or warehouse thereunto belonging, or therewith used in the day-time, and feloniously take away any money, goods, or chattels, of the value of five shillings," Cro. Car. 473. See 4 Hawk. P. C. ch. 33.

(1) The distinction between these clauses is this; the first is *robbing* the dwelling-house, the other *stealing* goods from the dwelling-house. By robbery, is implied a forcible breaking of the dwelling-house, but the stealing may be unaccompanied by any force. See 2 Hale, 356. Foster, 108. L. C. C. L. 354.

(2) The words in this enacting clause are for "*the felonious taking away*;" but as the preamble mentions the *robbing and breaking* and entering dwelling-houses, it has been held that the taking must be by robbery, that is, by breaking the dwelling-house. E. P. C. 638.

"*shillings*, or upwards, therein being, although no person shall be " within such dwelling-house, shop, or warehouse, shall be excluded from clergy."

And upon these statutes the following determinations have been made.

2 Hale, 336. † *Sect. 3. FIRST*, That the bare taking of goods out of a house, under this statute, will not oust the offender of his clergy, unless there is also such an actual breaking of the house as is necessary to constitute the crime of burglary; and therefore if he enters, the doors being open, and breaks open a chest, and steals goods to the value of five shillings, this shall not oust him of his clergy.

2 Hale, 337. † *Sect. 4. SECONDLY*, But if a man enters a house in the day-time, the doors being open, and no person being in the house, and then breaks open, or unlocks, or unlatches an inner door, and steals goods to the value of five shillings, he thereby loses the benefit of clergy, although he only removes the goods from the place where he takes them, and lays them on the floor; for this is a sufficient asportation to constitute a larceny at common law, and the statute doth not alter the nature of the offence.

Poulter's Case, 11 Co. 36.  
2 Hale, 356. † *Sect. 5. THIRDLY*, That to oust the offender of clergy, the indictment must pursue the statute, *viz.* " That in the day-time, " to wit, between the hour, &c. the mansion-house of *I. S.* broke " and entered, no person in the same house then being, and there, " &c. in the same house found, then and there feloniously stole, " took, and carried away, &c." for breaking the house in the day without taking the goods, is no felony.

2 Hale, 356. † *Sect. 6. FOURTHLY*, That if it appear on the evidence that it was in the night, or that any person was in the house at the time, or that he stole the goods, but did not break the house, the offender shall not be ousted of his clergy.

Smith's Case, Old Bailey, Oct. Sess. 1698.  
upon a reference to the twelve judges. † *Sect. 7. FIFTHLY*, But it hath been adjudged, that if on an indictment on this statute, it appear that the prisoner was let into the house by a servant, and that he afterwards broke open an inner door, it cannot be objected, that the servant was in the house at the time, for that a house with so treacherous a servant in it was equally defenceless as if no person whatever had actually been therein.

(a) 2 Hale, 358.  
(b) Sir H. Huns- gate's Case, Cro. Car. 473.  
(c) Burgess's Case, Kely. 27. 52.  
(d) Peyton's Case, Cases Cro. Law, 267. † *Sect. 8. SIXTHLY*, It is also decide<sup>d</sup>, that a chamber in an *inn of court* (a) is a mansion-house within this statute. But a lodging in *Whitehall* (b) or *Somerset-house*, (c) or the *Invalid Office* at *Chelsea*, (d) is not a dwelling-house within this statute; and therefore a robbery in such lodging is not excluded from clergy by this statute, if any person were at the time in any other part of the palace.

Rex v. Harding, Old Bailey, Jan. Sess. 1699. † *Sect. 9. SEVENTHLY*, So it hath been ruled, that if the prisoner enter at the outer door, being open, and break open the door of a room above stairs, and steal goods, yet if there is any person in the room below, it is not a case within the statute.

† *Sect. 10. EIGHTHLY*, It seems, that as the 39 Eliz. c. 15. only takes clergy from the principal where " an *out-house* in " which such robbery is committed" belongs to, or is used with  
the

the dwelling-house, and the 3 Will. and Mary, c. 9. only deprives aiders of clergy where the robbery is committed in "a shop or warehouse belonging to the dwelling-house," that accessaries before the fact, and persons aiding a robbery in an out-house which is not either a shop or warehouse belonging to the dwelling-house, would still be entitled to his clergy.

† *Sect. 11.* And now the benefit of clergy is taken away from robbery generally by 3 and 4 Will. and Mary, c. 9. which enacts, "That all and every person or persons that shall rob any other person, or shall comfort, aid, abet, assist, counsel, hire, or command any person or persons to commit such offence, shall not have the benefit of clergy."

† *Sect. 12.* And it has been held, that this statute excludes robbers from the benefit of clergy, in what place soever the offence was committed.

Danford and  
Newton's Case,  
O. B. Sept.  
Session, 1780.

*Robbery in a Church or Chapel.*

† *Sect. 1.* By 23 Hen. 8. c. 1. s. 3. "No person or persons which shall be found guilty for robbing any churches or chapels, or other holy places, shall be admitted to the benefit of clergy."

† *Sect. 2.* It does not appear, that accessaries to the crime of 2 Hale, 333. sacrilege are ousted of clergy by any statute; and certainly clergy 366. was not taken away from sacrilege at common law.

† *Sect. 3.* It is said, that no sacrilege is within this branch of Kely. 59. 69. the statute that is not accompanied with an actual breaking of But see ante. the church, &c.

*Larceny from the Person, and Robbery.*

Larceny from the person of a man without putting him in fear, is done either,

1. Openly and avowedly before his face; or,
2. Privily, without his knowledge.

*Sect. 1.* FIRST, Openly and avowedly before his face; as if one take off my hat from my head, and run away with it, or come into my shop and cheapen goods, and run away with them without paying for them, which is agreed not to be robbery; and, as it seems, is more properly indictable as a trespass than felony, unless the offender were either unknown, or immediately fled the country if he were known; otherwise I have a remedy against him in the ordinary course of civil justice, and it seems rigorous to make such offences capital which probably may be sufficiently provided against by more gentle methods. (1) However, it is certain that all open larcenies from the person are within the benefit

Dyer, 224.  
2 Roll. 154.  
Raym. 275.  
Crompt. 34.  
Dalt. c. 100.

(1) The case in *Dyer*, 224. was an indictment, *quod vi et armis apud B. in via regia ibidem 40s. in pecuniis numerat, &c.* and the judgment was, that it is not robbery if the person is not put in fear as by assault and violence. The case in *Roll's Reports* is where the fear was excited subsequent to the taking, and therefore only larceny. The case in *Raymond*, of running away with goods, after having

obtained the delivery, upon pretence of purchasing them, is expressly decided to be felony. And *Dutton* from *Crompton* only says, the tortious taking of another's goods without a title so to do, is but a trespass. These references therefore by no means prove that the offences mentioned are not felonies, if committed with a felonious intent.—Vide *Hale's Summary*, 73, 74, 75. *Kely*. 43. 70. 1 *Sid.* 254.

benefit of clergy, except such as are committed in a dwelling-house, &c. to the value of 40s.

† As to THE SECOND POINT, *viz.* Of privately stealing from the person.

Repealed by  
48 Geo. 3.  
c. 129. vide  
next section.

† *Sect. 2.* By 8 Eliz. c. 4. it was enacted, "That no person or persons which shall happen to be indicted or appealed for felonious taking of any money, goods, or chattels, from the person of any other, privily, without his knowledge, in any place whatsoever, and thereupon found guilty by verdict of twelve men, or shall confess the same upon his or their arraignment, or will not directly answer to the same according to the laws of this realm, or shall stand wilfully, or of malice or obstinately mute, or challenge peremptorily above the number of twenty, or shall be upon such indictment or appeal outlawed, shall from thenceforth be admitted to have the benefit of his or their clergy, but utterly be excluded thereof, and shall suffer death in such manner and form as they should if they were no clerks."

48 Geo. 3.  
c. 129. s. 2.  
—stealing from  
the person.

Several decisions on this statute took place while it remained in force, as to what should be considered privily and without the knowledge of the party, but they have now become unimportant, for by statute of 48 Geo. 3. c. 129. sect. 2. it is enacted, "that from and after the passing of this act, every person who shall at any time or in any place whatever feloniously steal, take and carry away any money, goods, or chattels from the person of any other, whether privily without his knowledge or not, but without such force or putting in fear as is sufficient to constitute the crime of robbery, or who shall be present, aiding and abetting therein, shall be liable to be transported beyond the seas for life, or for such term, not less than seven years, as the judge or court before whom any such person shall be convicted shall adjudge; or shall be liable, in case the said judge or court shall think fit, to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol, house of correction, or penitentiary house, for any term not exceeding three years."

In the case of one Charles Robinson and William Perry, who were convicted at Lancaster summer assizes, 1816, before Wood, baron, on an indictment under this statute, the following point was reserved. Whether the indictment was properly framed, inasmuch as it did not aver, in the words of the statute, that the stealing was from the person "without such force or putting in fear as was sufficient to constitute the crime of robbery," that exception being part of the enacting clause, and not in a proviso? secondly, if the indictment was not good on the statute, whether it was good as for a common larceny; and, if good, whether the court ought not to arrest the judgment, it being a sentence of transportation for life, not warranted by a conviction of simple larceny? The judges held the conviction right, consequently the indictment good.

### *Robbery.*

ROBBERY is a felonious and violent taking away from the person of another, goods or money to any value, putting him in fear.

In

In the explication whereof, I shall consider the following particulars : 3 Inst. 68.  
1 Hale, 531.

1. What taking away will satisfy the word *cepit* in an indictment for this offence.

2. What shall be said to be a taking away from the person.

3. What kind of taking shall be said to be violent.

4. In what respects robbery differs from other larcenies.

5. In what cases robbery, whether from the person of another or from his house is excluded from the benefit of clergy.

As to THE FIRST POINT, viz. What taking away will satisfy the word *cepit* in an indictment for robbery.

*Sect. 1.* It seems clear, that he who receives my money by my delivery, either whilst I am under the terror of his assault, or afterwards while I think myself bound in conscience (1) to give it to him by an oath to that purpose, which in my fear I was compelled by him to take, may, in the eye of the law, as properly be said to take it from me, as he who actually takes it out of my pocket with his own hands. 44 E. 3. 14.  
4 II. 4. 3.  
Dalt. c. 100.  
S. P. C. 27.  
Crompton, 34.  
3 Inst. 68.  
F. Cor. 464.

*Sect. 2.* Neither can he who has once actually completed the offence, by taking my goods in such a manner into his possession, afterwards purge it by any re-delivery.—† The outrage offered to the rights of society doth not vary in its nature, because ineffectual in its consequences. (a) Therefore where a robber, having taken a purse, returned it again, saying, “ If you value your purse, take it and give me the contents;” but was seized before the money was re-delivered; he was found guilty; (b) for the continuance of the property in the possession of the robber is not required by law. (c) 3 Inst. 60.  
(a) Prin. P. L. 286.  
(b) Peat's Case, Cases C. L. 200.  
(c) 3 Inst. 69.

*Sect. 3.* But he who only attacks me in order to rob me, but does not take my goods into his possession, though he go so far as to cut off the girdle of my purse, by reason whereof it falls to the ground, is not guilty of robbery; but highly punishable at the common law by fine and imprisonment, &c. for so enormous a breach of the peace. S. P. C. 27.  
Crompt. 34.  
Dalt. c. 100.  
1 Hale, 532.

*Sect. 4.* Yet in some cases a man may be said to rob me, where in truth he never actually had any of my goods in his possession; as where I am robbed by several of one gang, and one of them only takes my money; in which case, in judgment of law, every one of the company shall be said to take it, in respect of that encouragement which they give to another, through the hopes of mutual assistance in their enterprize; nay, though they miss of the first intended prize, and one of them afterwards ride from the rest, and rob a third person in the same highway without their knowledge, out of their view, and then return to them, all are guilty of robbery, for they came together with an intent to rob, and to assist one another in so doing. 1 Hale, 533,  
534. 537.  
1 Andr. 116.  
Pursey's Case,  
Crompt. 34.  
Dalt. c. 100.

As to THE SECOND POINT, viz. What shall be said to be taking away from the person.

*Sect.*

(1) This is not the true reason, but because the fear of that menace still continued upon him at the time he delivered the money. (1 Hale, 532.)



8. P. C. 27.  
Crom. 34, 35.  
Dalt. c. 100.  
5 Inst. 69.  
1 Hale, 533.  
Styles, 156.  
Salk. 613.  
Carth. 145.  
B. R. H. 107.  
Strange, 1015.  
Douglas, 197.  
Comyns, 478.

*Sect. 5.* Not only the taking away a horse from a man whereon he is actually riding, or money out of his pocket, but also the taking of any thing from him openly and before his face, which is under\* his immediate and personal care and protection, may properly enough be said to be a taking from the person: and therefore he who having first assaulted me takes away my horse standing by me, or having put me in fear drives my cattle in my presence out of my pasture, or takes up my purse which in my fright I cast into a bush, or my hat which fell from my head, or robs my servant of my money before my face, may be indicted as having taken such things from my person.

3 Inst. 68.  
2 Roll. 154.  
1 Hale, 535.  
Case of Rich.  
Moss, O. B.  
May Session,  
1784.

† *Sect. 6.* But the taking must be subsequent to the fear; for fear is the distinguishing ingredient between robbery and other larcenies. Therefore where a thief clandestinely stole a purse, and, on its being discovered in his custody, denounced vengeance against the party if he spoke of it, and then rode away, it was held to be simple larceny only, and not robbery; because the fear excited by the menaces of the thief was subsequent to the act of taking the purse. So where several men find another apparently intoxicated, and swearing he shall go home, they drag, abuse, kick him, and clandestinely take his money, this is no robbery; for no demand is made of money, nor any fear excited for the purpose of obtaining it.

As to THE THIRD POINT, *viz.* What kind of taking shall be said to be violent.

1 Hale, 533,  
534.  
Crom. 31.  
Dalt. c. 100.

*Sect. 7.* Wherever a person assaults another with such circumstances of terror as put him into fear, and cause him by reason of such fear to part with his money, the taking thereof is adjudged robbery, whether there were any weapon drawn or not, or whether the person assaulted delivered his money upon the other's command, or afterwards gave it him upon his ceasing to use force, and begging an alms; for he was put into fear by his assault, and gives him his money to get rid of him.

Foster, 128.  
4 Com. 242.  
Donally's  
Case, Cases in  
Cro. L. 176.

† *Sect. 8.* But it is not necessary that the fact of actual fear should either be laid in the indictment, or be proved upon the trial, it is sufficient if the offence be charged to be done *violenter et contra voluntatem*. And if it appear upon the evidence to have been attended with those circumstances of violence or terror, which in common experience are likely to induce a man to part with his property against his consent, either for the safety of his person, or for the preservation of his character and good name, it will amount to a robbery. (2)

Parkins's  
Case, Cases  
Cro. L. 238.  
O. B. 1784.  
p. 71.

† *Sect. 9.* Accordingly, to snatch a basket of linen suddenly from the head of another; or to pull an ear-ring from the ear of a lady; or if an officer feloniously take money from a prisoner not

(2) But if a man part with his money, not under the influence of terror at the time he parts with it, but with a view to bring the offenders to justice, this has been ruled not to be robbery. *Reave's Case*, O. B. June, 1794. (2 East, p. 734.) So also where a man has been induced to part with his money under the threat that the party to

whom he gave it was the head of a gang of rioters, who had at the time committed great devastation in Birmingham, and that unless he gave some money his house should be destroyed the next morning—this was ruled to be robbery, although there was no fear in the party for his personal safety. (2 East, P. C. 729.)

not to take her to gaol, under colour of authority, &c. without in either case having made any express demand, have been ruled sufficient *acts of violence* to constitute the crime of robbery.

Lapier's Case, Cases C. L. 264. Gascoign's Case, Cases Cro. Law, 234. Raym. 297. Dalt. 489. Prin. P. L. 286.

† *Sect. 10.* And to obtain property by threatening to accuse another of having been guilty of an unnatural crime, has been held, upon the solemn opinion of all the judges, to be an act sufficient to raise, in the mind of the party menaced, such a *terror* and apprehension of mischief as to constitute the offence by *putting in fear*; (3) for the law, *in odium spoliatoris*, will presume fear where there appears to be so just a ground for it.

† *Sect. 11.* But the taking must be *against the will* of the person robbed; and therefore if *A.* agree to be robbed by *B.* and *A.* places himself in a certain place for that purpose, and *B.* pursuant to the agreement take the goods from him by actual force, yet it is no robbery.

† *Sect. 12.* But if a person, knowing a certain highwayman infests a particular road, go that road, and, in order to detect him, suffer himself to be robbed by him, the property shall be considered as taken not only from his person, but against his will.

*Sect. 13.* And some have gone so far as to hold, that if a man meeting another going with his goods to market in order to sell them, compel him to sell them to him against his will, he is guilty of robbery, though he give for them more than they are worth; but perhaps this opinion is too severe, because the grievance to the party seems rather to proceed from the perverseness of his humour, than from any real injury done to him; and there seems to be no such enormity in the intention of the wrongdoer as is implied in the notion of felony.

*Sect. 14.* However it is certain, that the claim of property in the thing taken away, without any colour, is no manner of excuse.

As to THE FOURTH POINT, *viz.* In what respects robbery differs from other larcenies.

*Sect. 15.* FIRST, No other larceny shall have judgment of death, unless the thing stolen be above the value of *twelve-pence*; but robbery shall have such judgment, how small soever the value may be of the thing taken away.

*Sect. 16.* SECONDLY, Other larcenies, whether from the person or not, shall not be supposed to be done with violence or terror, but robbery is always laid as done on an assault with violence, and putting the party in fear, which is properly thus expressed in an indictment, *à persona J. S. violenter et felonice cepit et asportavit, in magnum prædicti J. S. terrorem.*

*Sect. 17.* THIRDLY, But they all agree in this, that the offenders had the benefit of clergy at the common law.

† As to THE FIFTH POINT, *viz.* In what cases robbery from the person of another is deprived of the benefit of clergy.

† *Sect.*

(3) See the arguments of the judges in *Rex v. Jones*, E. P. C. 714. upon the question of putting

in fear, where Lord Mansfield says putting in fear is *constructive violence*.

† *Sect. 1.* By 23 Hen. 8. c. 1. it is enacted, "That no person or persons which shall be found guilty for robbing of any person or persons in or near about the highways shall be admitted to the benefit of clergy."

† *Sect. 2.* By 4 and 5 Philip and Mary, c. 4. it is enacted, "That all and every person and persons that shall maliciously command, hire, or counsel any person or persons to commit or do any robbery in or near any highway, shall not have the benefit of clergy."

Moor, 16.

2 Hale, 349.

4 Hawk. ch. 33.  
s. 25.

† *Sect. 3.* It is necessary, in order to oust the offender of his clergy under these statutes, to aver in the indictment, that the offence was committed in *the highway*, or in *the king's highway*, or near *the king's highway*; for if it be laid "in the king's foot way leading from London to Islington," he shall have his clergy.

The case of  
Rich. Stoke-  
man, O. B.  
May sessions  
1718, coram  
EYRE Justice  
and MONTAGUE  
Chief Baron.

† *Sect. 4.* And if the indictment charge the robbery to have been committed in *the king's highway*, and it appears on evidence to have been committed in a private foot path leading across the fields to *Pancras*, or any other place, the offender shall have his clergy.

Oatley's case,  
Cases C. L. 47.

† *Sect. 5.* So if an indictment charge the robbery in the king's highway, and the evidence prove that it was committed in a house, the offender shall have his clergy.

1 Hale, 536.  
2 Hale, 350.

† *Sect. 6.* But if the offence be committed on the river *Thames*, or other public river within the body of a county, it may be laid as committed upon *the king's highway*, for the public streams are highways, and are called *haut streams le Roi*.

† *Sect. 7.* By 3 Will. and Mary, c. 9. which recites that wicked and ill-disposed persons are encouraged to commit robberies upon men's persons, by the privilege, as the law now is, of demanding the benefit of their clergy, IT IS ENACTED, "That all and every person or persons that shall rob any other person, or shall comfort, aid, abet, assist, counsel, hire or command any person or persons to commit any of the said offences, shall not have the benefit of his or their clergy."

Case of Danford  
and Newton,  
O. B. Sept. Ses-  
sion 1780. co-  
ram BULLER  
Justice.

† *Sect. 8.* And it has been ruled, that where an indictment of robbery consisted of two counts, the first on the 3 Will. and Mary, c. 9. and the other on 23 Hen. 8. c. 1. and it appeared that the robbery was committed in a house which had been long unoccupied, and only taken for the purpose of committing the offence, a conviction thereon ousted the offender of his clergy; for that the 3 Will. and Mary, c. 9. applied to all robberies wherever committed. (4)

### *Receivers.*

At common law, a man became accessory after the fact by receiving the felon only, and not by receiving the stolen property; but the great encouragement afforded to thieves by the easy mode of getting rid of their plunder, through receivers who purchased

it

(4) For assaulting with intent to rob, vide ante, p. 113.

it at an inferior price, knowing it to be stolen, and who were not punishable for such conduct, at length induced the legislature to consider them as accessories after the fact. Accordingly several statutes have passed—1st. As to the buying and receiving stolen goods in general—2d. As to the buying and receiving stolen lead, iron and pewter—3d. As to the buying or receiving jewels obtained by burglary or robbery—4th. As to the buying or receiving stores, &c. from ships by bum-boats; and 5th, as to buying and receiving securities for money, knowing them to have been stolen; and by several statutes, the bare possession of public stores is considered, if not duly accounted for, as equivalent to a guilty receiving.

*Buying Stolen Goods.*

† Sect. 1. By 3 Will. and Mary, c. 9. s. 4. IT IS RECITED, "That thieves and robbers are much encouraged to commit such offences, because a great number of persons make it their trade and business to deal in the buying of stolen goods;" and therefore ENACTED, "That if any person or persons shall buy or receive any goods or chattels that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, he or they shall be taken and deemed an accessory or accessories to such felony after the fact, and shall incur the same punishment, as an accessory or accessories to the felony after the felony committed."

Buyers of stolen goods reputed accessories to felony.

† Sect. 2. By 1 Ann. st. 2. c. 9. s. 2. IT IS RECITED, "That buyers and receivers of stolen goods do oftentimes convey away and conceal the principal felons, so that they cannot be convicted of such principal felony, and thereby such buyers and receivers have escaped all manner of punishment, which hath greatly encouraged the buying and receiving of such stolen goods:" for remedy whereof IT IS ENACTED, "That it shall and may be lawful to prosecute and punish every such person and persons buying or receiving any stolen goods, knowing the same to be stolen, as for a misdemeanor, to be punished by fine and imprisonment, although the principal felon be not before convicted of the said felony, which shall exempt the offender from being punished as accessory, if the principal shall be afterwards convicted."

Receivers of stolen goods may be punished, where the principal felon is not convicted.

† Sect. 3. By 5 Ann. c. 31. s. 5. IT IS RECITED, "That felons are much encouraged to commit such burglaries and felonies, because a great number of persons make it a trade to receive and buy of the said felons the goods so by them feloniously taken, and also do make it their business to harbour and conceal the said offenders after the said facts, knowing the said felonies and burglaries to have been by them committed:" and therefore ENACTED, "That if any person or persons shall receive or buy any goods or chattels that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, or shall receive, harbour, or conceal, any burglars, felons, or thieves, knowing them to be so, shall be taken and received as accessory or accessories to the said felony or felonies; and being of either of the said offences legally convicted, by the testimony of one or more credible witnesses, shall suffer and incur the pains of death as a felon convict."

Buyers and receivers of stolen goods made accessories, &c.

† Sect.

If principal felon cannot be taken, accessory to be tried as for a misdemeanor.

† *Sect. 4.* By 5 Ann. c. 31. s. 6. provided, "That if any such principal felon cannot be taken, so as to be prosecuted and convicted for any such offence, yet nevertheless it shall and may be lawful to prosecute and punish every such person and persons buying or receiving any goods stolen by any such principal felon, knowing the same to be stolen, as for a misdemeanor, to be punished by fine and imprisonment, or other such corporal punishment as the court shall think fit to inflict, although the principal felon be not before convicted of the said felony, which shall exempt the offender from being punished as accessory, if such principal felon shall be afterwards taken and convicted."

† *Sect. 5.* By 4 Geo. 1. c. 11. s. 1. "Persons convicted of buying and receiving stolen goods, knowing them to be stolen, may be transported for fourteen years."

(a) *Rex v. Davison*, 3 Burn, 74.  
(b) *Cases Cro. Law.*

† *Sect. 6.* It has been determined, that neither the receiving of money (a) nor bank notes (b), knowing the same to be stolen, are within the above statutes, for they are neither "goods, wares, nor merchandizes." (5)

*Rex v. Wild*, Stra. 57.

† *Sect. 7.* And it has been determined, that if the principal is convicted, the accessory cannot be tried for the misdemeanor on these statutes.

Every person buying or receiving stolen goods shall be deemed guilty of a misdemeanor, and prosecuted accordingly.

† *Sect. 8.* By 22 Geo. 3. c. 58. IT IS RECITED, "That the pernicious practices of buying and receiving stolen goods are become a great evil, by reason of the difficulty of discovering the persons guilty of the same, and of the insufficiency of the laws now in being for the punishment of such offenders, in certain cases;" AND ENACTED, "That in all cases whatsoever where any goods or chattels (except (6) lead, iron, copper, brass, bell-metal, and solder) shall have been feloniously taken or stolen, whether the offence of the person or persons so taking or stealing the same, shall amount to grand larceny or some greater offence, or to petit larceny only (except where the person or persons actually committing the felony shall have been already convicted of grand larceny, or some greater offence,) every person who shall buy or receive any such goods and chattels, knowing the same to have been so taken or stolen, shall be held and deemed guilty of, and may be prosecuted for, a misdemeanor, and shall be punished by fine, imprisonment, or whipping, as the court of quarter-sessions, who are hereby empowered to try such offender, or as any other court before which he, she or they, shall be tried, shall think fit to inflict; although the principal felon or felons be not before convicted of the said felony, and whether he, she, or they, is or are amenable to justice or not; any law or statute to the contrary notwithstanding: and in cases where the felony actually committed shall amount to grand larceny, or to some greater offence, and where the person or persons actually committing such felony

(5) The case of Sadi and Morris, in which this point was determined, seems to have been much shaken in Dean's case, in which it was resolved by all the judges, that bank notes were within the statute of 12 Ann. c. 7. against stealing money,

goods, &c. to the value of forty shillings, out of the dwelling-house. 2 E. P. C. 749.

(6) These cases having been provided for before, by statute 29 Geo. 2. c. 30. vide postea, 220.

“lony shall not be before convicted, such offender or offenders shall be exempted from being punished as accessory or accessories, if such principal felon or felons shall be afterwards convicted.”

† Sect. 9. By 22 Geo. 3. c. 58. s. 2. it is further enacted, That it shall and may be lawful for any one justice of the peace, upon complaint made before him upon oath, that there is reason to suspect that stolen goods are knowingly concealed in any dwelling-house, out-house, garden, yard, croft, or other place or places, by warrant under his hand and seal, to cause every such dwelling-house, out-house, garden, yard, croft, or other place or places, to be searched in the day time; and the person or persons knowingly concealing the said stolen goods, or any part thereof, or in whose custody the same, or any part thereof, shall be found, he, she, or they, being privy thereto, shall be deemed and held guilty of a misdemeanor, and shall and may be brought before any justice of the peace for the county, city, town corporate, riding, division, liberty, or place, and made amenable to answer the same, by like warrant of any such justice, and being thereof convicted by due course of law, shall be punishable in the manner aforesaid.”

Justices may grant search-warrants.

Punishment of persons in whose custody they are found.

† Sect. 10. By 22 Geo. 3. c. 58. s. 3. it is further enacted, That every constable, headborough, or tithing-man, in every county, city, town corporate, riding, division, liberty, or other place where there shall be officers, and every beadle within his ward, parish, or district, and every watchman, during such time only as he is on duty, shall and may apprehend, or cause to be apprehended, all and every person and persons who may reasonably be suspected of having, or carrying, or any ways conveying, at any time after sun-setting and before sun-rising, any goods or chattels suspected to be stolen, and the same, together with such person or persons, as soon as conveniently may be, to convey or carry before any justice of the peace for the county, city, town corporate, riding, division, liberty, or place aforesaid, to be dealt with according to law; and such person and persons, so carrying or conveying such goods or chattels knowing the same to have been stolen, and being thereof convicted, by due course of law, shall be deemed and held to be guilty of a misdemeanor, and, on conviction as aforesaid, shall be imprisoned for any time not exceeding six calendar months, nor less than three calendar months.”

Constables, &c. may apprehend persons suspected, &c.

† Sect. 11. By 22 Geo. 3. c. 30. s. 4. it is further enacted, That every person, to whom any goods or chattels, which have been feloniously stolen or taken, shall be brought and offered to be sold, pawned, or delivered, shall and is hereby empowered and required (there being reasonable cause to suspect that such goods or chattels were stolen) to apprehend, secure, and carry before a justice of the peace for the county, city, town corporate, riding, division, liberty, or place, where the same goods and chattels shall be so brought or offered to be sold, pawned, or delivered (having it in his or her power so to do), the person and persons bringing or offering the same.”

Persons offering stolen goods to be pawned or sold, shall be taken before a justice.

† Sect.

Persons under 15 years of age, charged with felony, discovering receivers, shall be pardoned.

† *Sect. 12.* By 22 Geo. 3. c. 30. s. 5. it is further enacted, “ If any person or persons, being out of custody, or in custody, “ if under the age of fifteen years, upon any charge of felony “ within benefit of clergy, shall have committed any felony, and “ shall afterwards discover two or more persons who shall have “ bought or received any goods or chattels which shall have been “ feloniously stolen or taken from any other person or persons, “ knowing the same to be stolen, so as two or more of the per- “ sons discovered shall be convicted of such buying or receiving, “ he, she, or they, so discovering, shall have and be entitled to “ the gracious pardon of his majesty, his heirs and successors, “ for all such felonies by him or her committed at any time or “ times before such discovery made, which pardon shall be like- “ wise a bar to any appeal brought for such felony.”

Not to repeal any former law &c.

† *Sect. 13.* By 22 Geo. 3. c. 30. s. 6. it is provided, “ That nothing herein contained shall extend to repeal any former law now in being for the punishment of such offenders; and “ provided also, that such offender, after having been prosecuted “ and convicted under this act, shall not, for the same offence, “ be afterwards punished, or liable to be punished, by any such “ former law.”

Rex v. Baxter, 5 Term Rep. 83.

† *Sect. 14.* It hath been determined, that in an indictment against a receiver under this statute, it is not necessary to aver that the principal had not been convicted.”

As to the SECOND POINT, viz. The offence of buying and receiving stolen lead, iron, &c.

Buyers or receivers knowing, &c. transported for 14 years.

† *Sect. 1.* By 29 Geo. 2. c. 30. IT IS RECITED, “ That the pernicious practice of stealing lead, iron, copper, brass, bell-metal and solder fixed to, or lying or being in or upon houses, out-houses, mills, ware-houses, workshops, and other buildings, areas, vaults, yards, gardens, orchards, or other places; and also the stealing of such materials from ships, barges, lighters, boats, and other vessels and craft, upon navigable rivers, in ports of entry or discharge, creeks and docks belonging thereto, and also from off wharfs, keys and other places, is become a great and notorious evil, by reason of the difficulty in apprehending and convicting the thieves, and still greater difficulty of discovering and convicting the buyers or receivers thereof; which buyers or receivers are the principal cause of the commission of such thefts: and in regard that the said offences are committed in such close and clandestine manner, that there can be no witness or witnesses to the same, but such who is or are partakers of the offence: and whereas if the buyers and receivers of lead, iron, copper, brass, bell-metal or solder, knowing or having reasonable cause to suspect the same to be stolen, or unlawfully come by, were made original offenders, and punishable independent of the apprehension and conviction of the thief; and if the apprehending, prosecuting, and convicting the offenders in both kinds were rendered more easy and speedy, it might more effectually tend to the discovery and suppression of the said offences:” and for remedy thereof ENACTED, “ That every person who shall buy or receive “ any lead, iron, copper, brass, bell metal or solder, knowing the “ same

“ same to be unlawfully come by, or shall privately buy or receive  
 “ any stolen lead, iron, copper, brass, bell-metal or solder, by  
 “ suffering any door, window or shutter to be left open or un-  
 “ fastened between sun-setting and sun-rising for that purpose,  
 “ or shall buy or receive the same or any of them, at any time in  
 “ any clandestine manner from any person or persons whatsoever,  
 “ shall, being thereof convicted by due course of law, although  
 “ the principal felon or felons has not or have not been convicted  
 “ of stealing the same, be transported for fourteen years to any  
 “ of his majesty’s colonies or plantations in *America*, according  
 “ to the laws in force for the transportation of felons.”

† *Sect. 2.* By 29 Geo. 2. c. 30. s. 2. it is further enacted,  
 “ That it shall and may be lawful for any one justice of the  
 “ peace, upon complaint made to him upon oath by any credit-  
 “ able person, that there is cause to suspect stolen lead, iron,  
 “ copper, brass, bell-metal or solder, is concealed in any dwelling-  
 “ house, out-house, yard, garden or other place or places, by war-  
 “ rant under his hand and seal, to cause every such dwelling-house,  
 “ out-house, yard, garden and place to be searched in the day-  
 “ time; and if any lead, iron, copper, brass, bell-metal or solder,  
 “ suspected to be stolen, shall be found therein, to cause the  
 “ same, and the person or persons in whose house, out-house,  
 “ yard, garden or other place the same shall be found, to be  
 “ brought before any two or more justices of the peace for the  
 “ said county, city, riding, division, liberty or place; and if the  
 “ said person or persons shall not give an account, to the satis-  
 “ faction of such justices, how he, she, or they came by the  
 “ same; or shall not, within some convenient time to be set by  
 “ the said justices, produce the party or parties of or from whom  
 “ he, she or they, bought or received such stolen lead, iron, cop-  
 “ per, brass, bell metal, or solder; that then the said person or  
 “ persons so offending shall be deemed and adjudged guilty of a  
 “ misdemeanor.”

Where cause of  
 suspicion, jus-  
 tice to issue  
 search warrant.

† *Sect. 3.* By 29 Geo. 2. c. 30. s. 3. it is further enacted, “ That  
 “ every constable, headborough or tithingman, in every county, city,  
 “ town corporate, or other place where they shall be officers, and  
 “ every beadle within his ward, parish, or district, and every watch-  
 “ man, during such time only as he is on his duty, shall and  
 “ may apprehend, or cause to be apprehended, all and every per-  
 “ son or persons who may reasonably be suspected of having  
 “ or carrying, or any ways conveying, at any time after sun-set-  
 “ ting and before sunrising, any lead, iron, copper, brass, bell-  
 “ metal or solder suspected to be stolen or unlawfully come by;  
 “ and the same, together with such person or persons, as soon  
 “ as conveniently may be, to convey or carry before any two or  
 “ more justices of the peace for the county, city, riding, division,  
 “ liberty, or place aforesaid; and if the person or persons so ap-  
 “ prehended, conveying any such lead, iron, copper, brass, bell-  
 “ metal or solder, shall not produce the party or parties from  
 “ whom he, she, or they bought or received the same, or some  
 “ other credible witness to depose upon oath the sale or delivery  
 “ of the said lead, iron, copper, brass, bell-metal or solder (which  
 “ oath any such justices are hereby empowered to administer).  
 “ or

Suspected per-  
 sons, in the  
 night-time, may  
 be apprehend-  
 ed, &c.



"or shall not give an account, to the satisfaction of any two or more of such justices, how he, she, or they came by the same, that then the said person or persons so apprehended shall be deemed and adjudged guilty of a misdemeanor."

In which cases, materials to be deposited with the church-wardens, &c.

† *Sect. 4.* By 29 Geo. 2. c. 30. s. 4. it is further enacted, "That where any person or persons shall be convicted of either of the misdemeanors aforesaid, it shall and may be lawful for any two or more of such justices to cause such lead, iron, copper, brass, bell-metal or solder, to be deposited in the hands of the churchwardens and overseers of the poor of the place where such lead, iron, copper, brass, bell-metal or solder were found, or in any other convenient place, for any time not exceeding thirty days; and in the mean time to order the said churchwardens and overseers of the poor, or one of them, in all and every of the parishes within the bills of mortality, to insert an advertisement in some public paper, and in every other parish or place to cause notice to be given by some public cryer, and by fixing on the church or chapel door notice describing such lead, iron, copper, brass, bell-metal or solder, and where the same shall be so deposited, to the end that persons having lost such lead, iron, copper, brass, bell-metal or solder, may come and claim the same, or any reputable person on their behalf; and in case any person or persons can prove their property to the said lead, iron, copper, brass, bell-metal or solder, upon oath, to the satisfaction of any two or more of such justices of the peace for such county, city, riding, division, liberty or place, that then such justices shall order restitution of such lead, iron, copper, brass, bell-metal or solder, to the owner or owners thereof, after paying the reasonable charges of removing, depositing and giving public notice of the same; and if at the end of the said thirty days no person or persons shall come and prove his, her, or their property, nor any reputable person on his or their behalf, to such lead, iron, copper, brass, bell-metal or solder, the same to be sold for the best price that can reasonably be had; and after deducting the charges as aforesaid, one moiety of the money arising from such sale to be given to the person or persons who shall apprehend the party or parties guilty of the misdemeanors afore-mentioned, or either of them; and the other moiety thereof to the poor of the parish where such offence was committed (if it is known where), or else where such convictions shall be made."

Owner proving his property, to have them.

Person to whom any such materials shall be brought may in suspected case stop, &c.

† *Sect. 5.* By 29 Geo. 2. c. 30. s. 5. it is further enacted, "That every person to whom lead, iron, copper, brass, bell-metal or solder shall be brought and offered to be sold, pawned or delivered, shall and is hereby empowered and required (there being reasonable cause to suspect that such lead, iron, copper, brass, bell-metal or solder, was stolen or unlawfully come by) to apprehend, secure, and carry before a justice of the peace for the county, city, riding, division, liberty or place where the same shall be so brought or offered (having it in his or her power so to do), the person or persons so bringing or offering the same, together with such lead, iron, copper, brass, bell-metal or solder; and such person or persons so apprehended

“prehended shall be dealt with, and such lead, iron, copper, brass, bell-metal or solder, shall be deposited and disposed of in the same manner, as if he, she, or they had been apprehended by the constable, headborough, tithingman, beadle or watchman, as aforesaid; and if it shall appear upon the oath of any person, notwithstanding such person or persons was or were concerned in the stealing the same, if corroborated with other credible circumstances, to the satisfaction of two or more justices of the peace for the county, city, riding, division, liberty or place, where the same shall be so brought or offered as aforesaid, that there was reasonable cause to suspect such lead, iron, copper, brass, bell-metal or solder, was stolen or unlawfully come by, and that the person or persons to whom such lead, iron, copper, brass, bell-metal or solder, was so brought, or offered, did not (having it in his, her, or their power so to do) apprehend, secure and carry before a justice of the peace as aforesaid, the person or persons, who so brought or offered the same, that then the person or persons to whom such lead, iron, copper, brass, bell-metal or solder was so brought or offered, shall be deemed and adjudged guilty of a misdemeanor.”

† Sect. 6. By 29 Geo. 2. c. 30. s. 6. it is further enacted, “That every person deemed and adjudged guilty of a misdemeanor, in having in his, her, or their possession, any lead, iron, copper, brass, bell-metal or solder, suspected to be stolen, or unlawfully come by, and not producing the party or parties of whom he, she, or they bought or received the same, nor giving a satisfactory account how he, she, or they came by the same, or in having, carrying, or conveying of lead, iron, copper, brass, bell-metal or solder, suspected to be stolen or unlawfully come by, and not producing the party or parties from whom he, she, or they bought or received the same, nor any credible witness to depose upon oath the sale or delivery thereof, nor giving a satisfactory account how he, she, or they came by the same (as the case shall be), shall, for every such misdemeanor, forfeit for the first offence the sum of forty shillings, and for the second offence the sum of four pounds, and for every subsequent offence the sum of six pounds; and that every person deemed and adjudged guilty of the misdemeanor of neglecting to apprehend, secure, and carry before a justice of the peace the person or persons (having it in his, her, or their power so to do) who brought or offered to sell, pawn or deliver any lead, iron, copper, brass, bell-metal or solder (as the case shall be) suspected to be stolen or unlawfully come by, shall, for every such misdemeanor, forfeit for the first offence the sum of twenty shillings, and for the second offence the sum of forty shillings, and for every subsequent offence the sum of four pounds; all which said respective forfeitures shall and may be levied by distress and sale of the goods and chattels of every such offender (rendering to him or her the overplus, after charges of the said distress and sale deducted) by warrant under the hands and seals of any two or more such justices before whom such offender was deemed and adjudged guilty; which forfeiture shall be paid, one moiety thereof to the informer, and

Persons convicted of a misdemeanor, &c. and not accounting satisfactorily for the same, to forfeit, &c.

Forfeiture how levied, &c.

“the

For want of distress, offender to be committed.

“the other moiety thereof to the overseers of the poor, for the use of the poor of the parish or place where such offence was committed (if it is known where), or else where such conviction shall be made; and if no sufficient distress shall be found, whereupon to levy the said respective forfeitures, then the said justices shall and may commit every such offender, so respectively deemed and adjudged guilty as aforesaid, to the common gaol or other prison, or house of correction, within their jurisdiction, without bail or mainprize, for the space of one month for the first offence, and for the second offence for the space of two months, and for every subsequent offence until such offender shall be discharged by order of the court of general or quarter-sessions.”

Convictions to be certified to the quarter-sessions.

† Sect. 7. By 29 Geo. 2. c. 30. s. 7. it is further enacted, “That every conviction of any offender, in any of the aforesaid misdemeanors, shall be certified by two or more of the justices of the peace, making the same, to the next general or quarter-sessions of the peace, to be filed and entered amongst the records of the said sessions; which said conviction shall be good and effectual in law to all intents and purposes, and shall not be quashed, set aside, or adjudged void or insufficient for want of any form of words whatsoever, nor be liable to be removed by *certiorari* into his majesty’s court of *king’s bench*, but shall be deemed and taken to be final, to all intents and purposes whatsoever.”

Conviction not to be quashed, or removed.

Felon convicting the buyers or receivers, intitled to his pardon.

† Sect. 8. By 29 Geo. 2. c. 30. s. 8. it is further enacted, “That if any person, being out of prison, shall commit any felony, by stealing any lead, iron, copper, brass, bell-metal or solder, and afterwards discover two or more persons who shall buy or receive any stolen lead, iron, copper, brass, bell-metal or solder, knowing the same to be stolen, so as two or more of the persons discovered shall be convicted of such buying or receiving, he, she, or they so discovering shall have, and be intitled to, the gracious pardon of his majesty, his heirs and successors, for all such felonies by him or her committed, at any time or times before such discovery made, which pardon shall be likewise a bar to any appeal brought for such felony.”

And convicting any of a misdemeanor, in not apprehending, &c. is discharged from prosecution for such felony.

† Sect. 9. By 29 Geo. 2. c. 30. s. 9. it is further enacted, “That if any person shall be concerned in the stealing any lead, iron, copper, brass, bell-metal or solder, and shall afterwards, being out of prison, discover any person to whom he, she, or they shall have offered to sell, pawn or deliver any stolen lead, iron, copper, brass, bell-metal or solder, so as such person be convicted of the misdemeanor of not apprehending, securing, and carrying him, her, or them before a justice as aforesaid, that then the person making such discovery shall not be liable to be prosecuted for stealing the lead, iron, copper, brass, bell-metal or solder, so offered as aforesaid.”

Limitation of actions.

† Sect. 10. By 29 Geo. 2. c. 30. s. 10. it is further enacted, “That if any action or suit shall be commenced or brought against any justice or justices of the peace, or other officer or person whatsoever, for doing or causing to be done any thing “in

"in pursuance of this act, concerning the said offences, the same shall be commenced or brought within six months after such cause of action has accrued; and the defendant in such case may plead the general issue, and give the special matter in evidence; and if, upon such action, a verdict shall be given for the defendant, or the plaintiff become nonsuited, or discontinued his action, the defendant shall have treble costs."(1)

† Sect. 11. By 29 Geo. 2. c. 30. s. 11. it is provided, "That nothing herein contained shall extend, or be construed to extend to repeal any former law now in being, for the punishment of such offenders; PROVIDED ALSO, that such offender, after having been punished by this act, shall not for the same offence be afterwards punished or be liable to be punished by any such former law."

Former laws not vacated, nor offenders liable to double punishment.

† Sect. 12. By 21 Geo. 3. c. 69. IT IS RECITED, "That the above statute 29 Geo. 2. c. 30. has been found by experience to tend to good and useful purposes, and to prevent many felonies being committed in respect to the several articles therein mentioned; but the metal called *pewter* not being mentioned or included in the said act, evil-disposed persons have taken advantage thereof, and the stealing of pewter pots, and other pewter, and the buying and receiving such pewter pots, and other pewter, knowing the same to be stolen, is become a great and notorious evil:" and therefore ENACTED, "That every person who shall buy or receive any pewter pot, or other pewter, knowing the same to be stolen, &c. shall, on conviction for a felony, be transported for seven years, &c. Foster, 74.

"buy or receive any pewter pot, or other vessel, or any pewter in any form or shape whatever, knowing the same to be stolen, or unlawfully come by; or shall privately buy or receive any stolen pewter, by suffering any door, window or shutter, to be left open or unfastened between sun-setting and sun-rising, for that purpose; or shall buy or receive the same at any time, in any clandestine manner, from any person or persons whatsoever; shall, being thereof convicted by due course of law, although the principal felon or felons has not or have not been convicted of stealing the same, be transported, in like manner as other felons are directed to be transported by the laws and statutes of this realm, for any time not exceeding seven years, or be kept or detained in prison, and therein kept to hard labour, for any time not exceeding three years, nor less than one year; and within that time (if such Court shall think fitting) such offender or offenders shall be once, or oftener, but not more than three times, publicly whipped."

Every person who shall buy or receive any pewter pot, or other pewter, knowing the same to be stolen, &c. shall, on conviction for a felony, be transported for seven years, &c. Foster, 74.

† Sect.

(1) It has been considered by some, that this act, 29 Geo. 2. c. 30. relates to the materials therein mentioned, only in their raw state, as contradistinguished from wrought goods; but there is a great difficulty in adopting such a construction, for the statute speaks of lead and iron, &c. *fixed to houses*, which cannot be in their raw state: but the metals must in some sort be manufactured, and be either bars, bolts, rails, sheets of lead, or in some other form capable of a more specific description than merely lead, iron, or copper. That

this statute was not intended to be so confined, seems evident from the preamble of the statute 21 Geo. 3. c. 69. from whence it must be collected that the legislature considered that if pewter generally had been mentioned in the former law, it would have reached the case of receiving pewter pots after they had been stolen, and that pewter was a sufficient description of every thing manufactured out of it, and that the form or shape did not make that description less proper. (2 E. P. C. 752.)

Foster, 74.

† Sect. 13. But these statutes, which make the receivers of stolen goods accessories to the felony, being understood to make them accessories only in such cases where by law an accessory may be, do not extend to cases where the property stolen does not amount to the value of twelve-pence.

### *Buying and Receiving Stolen Jewels.*

Persons receiving jewels, &c. knowing them to be stolen, triable as well before as after conviction of principal felons: and on conviction to be transported for fourteen years.

By 10 Geo. 3. c. 48. IT IS RECITED, "That the facility with which stolen jewels, and gold and silver plate, are disposed of, is one principal cause of the frequent commission of burglaries and highway robberies; and the present laws against the receiving of stolen goods are found insufficient to deter persons from that practice:" and therefore ENACTED, "That every person who shall buy or receive any stolen jewel or jewels, or any stolen gold or silver plate, watch or watches, knowing the same to have been stolen, shall, in all cases where such jewel or jewels, or gold or silver plate, shall have been feloniously stolen, accompanied with a burglary actually committed in stealing the same, or shall have been feloniously taken by a robbery on the highway, be triable as well before conviction of the principal felon in such felony and burglary or robbery, whether he shall be in or out of custody, as after his conviction: and if any person so buying or receiving such jewel or jewels, or gold or silver plate, shall be convicted thereof, he shall be adjudged guilty of felony, and be transported to some of his majesty's plantations in America for the space of fourteen years, according to the laws in force for transportation of felons."(1)

### *Receiving Stores, &c. from Ships by Bumb-boats.*

Persons navigating bumb-boats on the river Thames, and receiving any stores or articles belonging to the ships in the said river, are guilty of a misdemeanor.

† Sect. 1. By 2 Geo. 3. c. 28. IT IS RECITED, "That many ill-disposed persons, using and navigating upon the river Thames certain boats, commonly called bumb-boats, and other vessels, under pretence of selling liquors of different sorts; and also slops, tobacco, brooms, fruit, greens, gingerbread, and other such like ware and things to and amongst the seamen and labourers employed in and about ships, vessels, and other craft there, do frequently take occasion to cut, damage, and spoil the cordage, cables, buoys, and buoy-ropes, and the headfasts, and other fasts belonging to such ships, vessels, and craft, and fraudulently carry away the same; likewise encourage such seamen and labourers to dispose of such cordage, cables, and buoys, and such goods, merchandizes, materials, and stores, secretly and unlawfully, whereby great losses are sustained by merchants and owners of such ships, vessels, and other craft, in the said river:"

for

(1) By the enacting part of this clause the words "watch or watches" are omitted, evidently by mistake. Under this statute Esther Moses was indicted at the Kent summer assizes, 1783, before Gould, J. The indictment set forth a robbery on Mr. Drummond, on the highway, of a watch, gold watch case, and two cornelian seals set in gold; and then charged the prisoner with having received the stolen watch, jewels, and gold plate above

mentioned, knowingly, against the form of the statute. The prisoner was convicted: but the case was reserved for the opinion of the judges, whether the receiving a gold watch and such seals, knowing them to have been stolen, was a felony within the act. Some thought the gold case was plate within the meaning of the act: but others differed. They all, however, agreed, that the cornelian seals, set in gold, were jewels. (2 E. P. C. 755.)

for remedy whereof it is ENACTED, "That if any person or persons shall use, let out to hire, lend, or navigate, or shall be aiding or assisting in using or navigating upon the said river, any bumb-boat, or other boat, for the purpose of selling, bartering, exchanging, or exposing to sale, to and amongst the seamen and labourers employed in and about ships, vessels, or other craft, any liquors, slops, tobacco, brooms, or any fruit, greens, gingerbread, or other such like ware: and shall sell, barter, exchange, or expose to sale as aforesaid, any sort of liquor, or any slops, tobacco, brooms, or any fruit, greens, gingerbread, or other such like ware or things, in, from, or out of any bumb-boat, or other boat (other than and except such bumb-boats, and other boats and vessels as shall be entered in the office of the master, wardens, and assistants of the guild, fraternity, or brotherhood, of the most glorious and undivided *Trinity*, and of *Saint Clement*, in the parish of *Deptford Strond*, in the county of *Kent*, in manner herein-after mentioned, and shall be used and navigated for the purposes aforesaid, in the day time, between sun-rising and sun-setting only); or if any person or persons shall take in exchange, or by way of barter, or shall unlawfully receive, or procure to be delivered to them, any ropes, cordage, tackle, apparel, furniture, stores, materials, or any part of any cargo or loading of any ships or vessels in the said river; all and every such person or persons respectively shall, upon conviction thereof before any justice or justices of the peace of and within any county, city, division, liberty, or place adjoining to the said river, upon the oath of one or more credible person or persons, be deemed guilty of a misdemeanor; and it shall and may be lawful for any person or persons to apprehend and detain all persons then on board such boat, and also to seize, search and detain in some place of safety, such boat, and the tackle, apparel, and furniture, and loading thereof; and the person and persons so apprehended shall be (as soon as conveniently may be) conveyed before such justice or justices of the peace as aforesaid; and such boat, with the said tackle, apparel, furniture, and loading thereof, shall, upon such conviction as aforesaid, be forfeited and disposed of as is herein-after mentioned."

† *Sect. 2.* By 2 Geo. 3. c. 28. s. 2. it is enacted, "That every bumb-boat, or other boat whatsoever, used and navigated for the purposes aforesaid, upon the said river, between *London-bridge* and the *Lower Hope Point*, shall be entered by the owner or owners thereof with the master, wardens, and assistants, at their office at the *Trinity-house* in *Water-lane*, *London*, specifying the name or names, or place and places of abode of such owner or owners; to the intent that the said master, wardens, and assistants, may register every such entry, and deliver in writing to such owner or owners a number to be marked on one or more part or parts of every such bumb-boat, or other boat; and every such owner or owners shall cause the number so delivered to be forthwith marked, together with his, her, or their christian and surname or names, and place or places of abode, upon such part or parts of the said boat so

Bumb-boats shall be registered at the *Trinity-house*.

"entered as aforesaid, in such manner as the said master, wardens, and assistants shall, from time to time, direct and appoint, in pursuance of the authorities and directions herein-after given for that purpose."

The register shall be renewed on every change of the property in such bumb-boat.

† *Sect. 3.* By 2 Geo. 3. c. 28. s. 3. it is provided, "That every time, and so often as the property of any such bumb-boat, or other boat, shall be varied or altered, the new owner or owners shall forthwith make a fresh entry of the same, and cause the number delivered in pursuance thereof to be marked on the said boat, together with his, her, or their christian and surname or names, and place or places of abode, upon such part or parts of the said boat, and in like manner as is herein-before directed, at the first entering of any such boat."

The Trinity Company shall number the register and mark the boats.

† *Sect. 4.* By 2 Geo. 3. c. 28. s. 4. it is further enacted, That the said master, wardens, and assistants, shall, and they are hereby empowered and required to receive and register every such entry in a book or roll to be provided and kept for that purpose, and to deliver out a number, in writing, to such owner or owners, to be marked on one or more part or parts of such boat, in such manner as shall be directed and appointed in pursuance of this act, for the registering which entry, and delivering out such number, the sum of five shillings shall be paid, and no more: and the said master, wardens, and assistants, are hereby authorised and empowered to take and receive the same, and, from time to time, to make such orders, rules, and regulations, as they shall think requisite and proper, for the ascertaining the part or parts of such boat, on which the said number, and the names and place or places of abode of the owner or owners thereof shall be marked, and in what manner, and of what dimensions the figure or figures, and letters, composing such number, and names and place or places of abode, shall be made, and how the same shall be, from time to time, renewed, and kept fair and legible; and that all such orders, rules, and regulations, after one publication thereof in the *London Gazette*, and printed copies of the same being affixed at *Iron Gate*, the *Hermitage*, *Execution Dock*, *Shadwell Dock*, *Rotherhithe Old Stairs*, *Deptford*, *Ratcliff Cross*, and *Blackwall*, shall be observed by and binding upon every owner or owners of such boats so entered as aforesaid."

The Company, or persons deputed by them, may stop and search bumb-boats.

† *Sect. 5.* By 2 Geo. 3. c. 28. s. 5. it is enacted, "That it shall and may be lawful for the said master, wardens, and assistants, or such person or persons as they shall from time to time depute and appoint under the seal of their corporation, and for all owners or masters of ships or vessels, either in whole or in part, in the said river respectively, or for such person and persons as the said owners and masters, or any seven or more of them, by writing under their hands and seals, shall, for that purpose, nominate, depute, and appoint (and which it shall be lawful for them, from time to time, to do) at any time or times, to stop, search, and detain, in some place of safety, any boat which there shall be reason to suspect has any ropes, cordage, tackle, apparel, furniture, stores, materials, or any  
"part

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“ part of any cargo or lading, stolen or unlawfully procured from  
“ or out of any ship or vessel in the said river; and also to ap-  
“ prehend and detain, or cause to be apprehended and detained,  
“ any person or persons who may be reasonably suspected of  
“ having or conveying any such goods, stores, or things in such  
“ boat; and such person or persons so apprehended shall be (as  
“ soon as conveniently may be) conveyed before one or more  
“ justice or justices of the peace, for any county, city, division,  
“ liberty, or place, adjoining to the said river; and if such per-  
“ son or persons shall not produce the party or parties from  
“ whom he, she, or they bought or received such merchandizes,  
“ goods, stores, or things aforesaid, or some credible person to  
“ depose, upon oath, the sale or delivery thereof, or shall not  
“ give an account to the satisfaction of such justice or justices,  
“ how he, she, or they came by the same; that then the said  
“ person or persons so apprehended shall be deemed and ad-  
“ judged guilty of a misdemeanor; and such boat, with her  
“ tackle, apparel, furniture, and loading, shall, upon such con-  
“ viction, be forfeited and disposed of as is herein-after directed.”

† Sect. 6. By 2 Geo. 3. c. 28. s. 6. it is further enacted,  
“ That every constable, headborough, and beadle, and every  
“ watchman (during such time as he shall be on duty) of every  
“ parish and place where he shall be an officer, shall and may  
“ apprehend and detain, or cause to be apprehended and de-  
“ tained, all and every person and persons who may reasonably  
“ be suspected of having or carrying, or any ways conveying, any  
“ ropes, cordage, tackle, apparel, furniture, stores, materials, or any  
“ part of any cargo or lading, stolen or unlawfully procured from  
“ or out of any ship or vessel in the said river *Thames*, and also  
“ shall and may seize and detain in some place of safety such  
“ merchandizes, goods, stores, and things aforesaid, and shall, as  
“ soon as conveniently may be, convey, or cause the person or  
“ persons so apprehended to be conveyed, before any one or  
“ more justice or justices of the peace for any county, city, divi-  
“ sion, liberty, or place adjoining to the said river; and if such  
“ person or persons shall not produce the party or parties from  
“ whom he, she, or they bought or received the same, or some  
“ credible person to depose upon oath the sale or delivery thereof,  
“ or shall not give an account, to the satisfaction of such justice  
“ or justices, how he, she, or they came by the same, that then  
“ the said person and persons so apprehended shall be deemed  
“ and adjudged guilty of a misdemeanor.”

Constables and watchmen may seize stores suspected to be stolen from ships by means of bumb-boats;

† Sect. 7. By 2 Geo. 3. c. 28. s. 7. it is further enacted,  
“ That it shall and may be lawful for any justice of the peace,  
“ upon information made to him on oath, by any credible per-  
“ son or persons, that there is cause to suspect that any mer-  
“ chandizes, goods, stores, or things (suspected to have been  
“ stolen or unlawfully come by, or taken from some ship or  
“ vessel in the said river) are concealed in any dwelling-house,  
“ warehouse, out-house, yard, garden, or other place, by warrant  
“ under his hand and seal, to cause every such dwelling-house,  
“ warehouse, out-house, yard, garden, and place to be searched  
“ in the day-time; and if any such merchandizes, goods, stores,  
“ or

and justices of peace may grant a search-warrant on a suspicion of their being concealed.



"or things shall be found therein, to cause the same to be deposited and kept in some place of safety; and also to cause the person or persons in whose house, warehouse, out-house, yard, garden, or other place the same shall be found, to be brought before him, or any other justice or justices of the peace for the same county, city, division, liberty, or place; and if such person or persons shall not give an account to the satisfaction of such justice or justices how he, she, or they came by the same, or shall not within some reasonable and convenient time, to be set by such justice or justices, produce the party or parties of or from whom he, she, or they bought or received the same merchandizes, goods, stores, or things, that then the person or persons in whose house, warehouse, out-house, yard, garden, or other place the same shall be found, shall be deemed and adjudged guilty of a misdemeanor."

The goods shall be deposited with the parish-officers on the offender being convicted of either of the misdemeanors,

† *Sect. 8.* By 2 Geo. 3. c. 28. s. 8. it is enacted, "That upon any person or persons being convicted of either of the said last-mentioned misdemeanors, it shall and may be lawful for such justice or justices, before whom such person or persons was or were convicted, to cause such merchandizes, goods, stores, or things to be deposited in the custody of the churchwardens or overseers of the poor of the place where they shall have been so first deposited as aforesaid (who are hereby required to receive the same), or in any other convenient place, for any time not exceeding thirty days; and to order such churchwardens or overseers of the poor, or one of them, if the same shall happen to be in any of the parishes or places within the bills of mortality, to insert immediately an advertisement in some public newspaper; and if the same shall happen to be in any other parish or place, to cause notice to be immediately given by some public cryer, and by affixing on the church or chapel door a notice in writing, describing such merchandizes, goods, stores, or things, and where the same shall have been so deposited, to the end that persons having lost any such, or any reputable person on their behalf, may come and claim the same, within thirty days from the time of giving and affixing such notice as aforesaid; and in case any person or persons do or shall, within the space of such thirty days, prove his, her, or their property in and to the said merchandizes, goods, stores, or things, upon oath, to the satisfaction of one or more justice or justices as aforesaid, that then such justice or justices shall order restitution of such merchandizes, goods, stores, or things to be made to the owner or owners thereof, after paying the reasonable charges of seizing, removing, depositing, and giving public notice as aforesaid, and also reasonable compensations to the person or persons giving such information as aforesaid; such charges and compensations to be settled and ascertained by such justice or justices: but if at the end of the said thirty days (notice having been given as aforesaid) no such proof shall be made as aforesaid, the said merchandizes, goods, stores, or things shall be sold by the churchwardens or overseers, in whose custody the same shall have

" have been deposited as aforesaid, for the best price that can reasonably be had; and, after deducting the charges so settled as aforesaid, the remainder of the money arising from such sale shall be given, one moiety thereof to the person or persons so apprehending or giving information as aforesaid (as the case shall be) of the party or parties guilty of the misdemeanors as aforesaid, or either of them, and the other moiety to the poor of the parish or place where such merchandizes, goods, stores, or things shall have been so first deposited as aforesaid."

† Sect. 9. By 2 Geo. 3. c. 28. s. 9. it is further enacted, Pawnbrokers may stop stores suspected to have been stolen.  
 " That every person to whom any goods, stores, or things belonging to ships or vessels shall be brought and offered to be sold, pawned, or delivered, shall, and he or she is hereby empowered and required (there being reasonable cause to suspect that such merchandizes, goods, stores, or things were stolen, or unlawfully come by, from or out of any ship or vessel in the said river) to apprehend, secure, and carry before a justice of the peace for the county, city, division, liberty, or place where the same shall be so brought or offered, the person or persons so bringing or offering the same, and in the meantime to secure such merchandizes, goods, stores, or things, and such person or persons so apprehended shall be dealt with, and such merchandizes, goods, stores, or things shall be deposited and disposed of, in the same manner as if he, she, or they had been apprehended by the constable, headborough, beadle, or watchman as aforesaid."

† Sect. 10. By 2 Geo. 3. c. 28. s. 10. it is further enacted, Persons guilty of the misdemeanors shall forfeit, &c.  
 " That every person deemed and adjudged guilty of any of the misdemeanors aforesaid shall, for every such misdemeanor, forfeit, for the first offence, the sum of forty shillings; for the second offence, the sum of four pounds; and for every subsequent offence the sum of four pounds; all which said respective forfeitures shall and may be levied by distress and sale of the goods and chattels of every such offender (rendering to him, her, or them the overplus, after charges of the said distress and sale deducted), by warrant under the hand and seal, or hands and seals, of any one or more of such justice or justices before whom such offender was convicted; which forfeiture shall be paid, one moiety thereof to the person apprehending such offender or offenders, or giving information, as the case shall be, and the other moiety thereof to the said master, wardens, and assistants of the said corporation, to be distributed among the poor decayed seamen, and their widows, under the care of the said corporation; and if the said respective forfeitures shall not be paid, nor sufficient distress shall be found whereon to levy the same, then the said justice or justices shall and may commit every such offender so convicted as aforesaid to the common gaol, or other prison or house of correction within his or their jurisdiction, without bail or mainprize, for the space of one month for the first offence, and for the second offence for the space of two months, and for  
 " every

"every subsequent offence, until such offender shall be discharged by order of the court of general or quarter-sessions."

Convictions of such *misdeemeanors* to be certified to the quarter-ses-

† *Sect. 11.* By 2 Geo. 3. c. 28. s. 11. it is further enacted, "That every conviction of any offender in any of the said misdemeanors shall be certified by the justice or justices of the peace making the same, to the next general or quarter-sessions of the peace, to be filed and entered among the records of the said session; which said conviction shall be good and effectual in law, to all intents and purposes, and shall not be quashed, set aside, or be adjudged void or insufficient for want of any other form or words whatsoever; nor be liable to be removed by *certiorari* into his majesty's court of king's bench, but shall be deemed and taken to be final, to all intents and purposes whatsoever."

Persons buying or receiving goods stolen from vessels in the river *Thames*, shall be transported for fourteen years.

† *Sect. 12.* By 2 Geo. 3. c. 28. s. 12. it is further enacted, "That every person who shall buy or receive any part of the cargo or loading of, or any goods, stores, or things, of or belonging to any ship or vessel in the said river, knowing the same to be stolen or unlawfully come by; or shall privately buy or receive any such goods, stores, or things, or any part of such cargo or loading, by suffering any door, window, or shutter to be left open or unfastened between sun-setting and sun-rising for that purpose, or shall buy or receive the same, or any of them, at any time, in any clandestine manner, from any person or persons whomsoever, shall, being thereof convicted by due course of law (although the principal *felon* or felons, offender or offenders, has or have not been convicted of stealing or unlawfully procuring the same), be transported for fourteen years to any of his majesty's colonies or plantations in *America*, according to the laws in force for the transportation of felons."

Persons cutting any cables or other fasts of ships in the River, shall be transported for seven years.

† *Sect. 13.* By 2 Geo. 3. c. 28. s. 13. it is further enacted, "That if any person or persons shall cut, damage or spoil any cordage, cable, buoys, buoy rope, headfast, or other fast, fixed to any anchor or moorings belonging to any ship or vessel at anchor or mooring in the river *Thames*, or any rope used for the purpose of mooring or rafting masts or timber, or shall be aiding or assisting therein, with an intent to steal the same; such person or persons shall, being convicted thereof on the oath of two or more credible witnesses, be transported to some of his majesty's plantations in *America* for the space of seven years, according to the laws now in force for the transportation of felons."

Offenders discovering two accomplices, intitled to pardon.

† *Sect. 14.* By 2 Geo. 3. c. 28. s. 14. it is further enacted, "That if any person, being out of prison, shall, by stealing, or unlawfully receiving, any part of any cargo or lading, of, or any goods, stores, or things belonging to, or out of, or from any ship or vessel in the said river, and shall afterwards discover two or more persons who shall have bought or received any stolen or unlawfully procured goods, stores, or things, or any part of any cargo or lading of, or belonging to, or by, from or out of any ship

## Ch. 10. LARCENY.—*Receiving Ships' Stores, &c.*

“ship or vessel in the said river, knowing the same to be stolen, or unlawfully procured, so as two or more of the persons discovered shall be convicted of such buying or receiving; every person so discovering shall have and be intitled to the gracious pardon of his majesty, his heirs and successors, for all such felonies by him or her committed at any time or times before such discovery made; which pardon shall be likewise a bar to any appeal brought for any such felony.”

† Sect. 15. By 2 Geo. 3. c. 28. s. 15. it is enacted, “That if after the publication of any such orders, rules, and regulations by the said master, wardens, and assistants, any person or persons shall row or navigate, within the limits aforesaid, any such boat as is hereinbefore directed to be entered, marked, and numbered, not being so entered, marked, and numbered as aforesaid; or having a false mark or number, or not having the real name or names, and places of abode, of the owner or owners of such boat inscribed thereon, or not having such names and figures kept fair and legible, in such manner as shall have been directed and required, from time to time, by such orders, rules, and regulations; in each of the cases aforesaid, every such person, being thereof convicted before one or more justice or justices of the peace of any county, city, division, liberty, or place, near or adjoining to the said river, upon his or her own confession, or the oath of one or more credible person or persons, shall, for every such offence, forfeit and pay the sum of forty shillings; one moiety whereof to be paid to the person or persons who shall give information of, and prosecute to conviction, such offender or offenders as aforesaid, and the other moiety to the said master, wardens, and assistants of the said corporation, to be applied by them as aforesaid: and it shall and may be lawful for any person or persons, upon discovery of any such offence or offences, to seize and detain any such boat, with all her tackle, apparel, and furniture thereunto belonging; and shall thereupon, within the space of forty-eight hours after such seizure made, give information thereof, and of the nature of the offence, to any one or more justice or justices of the peace as aforesaid, who shall proceed to hear, and shall determine, as soon as conveniently may be, upon such information; and if such forfeiture shall not be paid within the space of twenty-four hours after conviction, then the same shall be raised by sale of the said boat, and her tackle and appurtenances; and every justice of the peace, within his jurisdiction, is hereby authorised and required to issue his warrant under his hand and seal, directed to the constable, or some other peace-officer of the parish or place in which such boat so seized as aforesaid shall be detained, to cause sale to be made thereof, and all her tackle and appurtenances, with all convenient speed, for raising the money forfeited for the said offence as aforesaid, rendering to the offender or offenders the overplus (if any there shall be) after deducting the charges of detaining and selling such boat.”

Persons navigating bumb-boats, not entered at the Trinity-House, shall be liable to a penalty of forty shillings.

† Sect. 16. By 2 Geo. 3. c. 28. s. 16. it is further enacted, “That the said master, wardens, and assistants shall and may, and they are hereby authorised and required, on any complaint  
“to plaintiffs.

The master and wardens of the Trinity-House may hear complaints.

to be made to them by any credible person or persons, of any thefts, robberies, frauds, or other illegal practices being carried on, or reasonably suspected to be carried on, in any boat so to be numbered and marked as aforesaid, to summon the owner or owners thereof to appear before them, or any five or more of them, at the *Trinity-house* in *Water-lane*, or other usual place of meeting appointed, or to be appointed, at such time as they shall appoint; at which time and place the said master, wardens, and assistants, or any five or more of them, shall inquire into the said complaint in a summary way; and in case the said complaint shall be proved to their satisfaction, and they shall so think fit, they the said master, wardens, and assistants, or any five or more of them, being a majority of the members then present, may thereupon take away and totally abolish the said number so given to the said boat as aforesaid; and also may, for the future, refuse to enter, as before directed, any boat of or belonging to such owner or owners; any thing hereinbefore contained to the contrary notwithstanding."

In what cases  
bumb-boats  
may be ordered  
to be burned.

† *Sect. 17.* By 2 Geo. 3. c. 28. s. 17. it is enacted, " That  
" where any person or persons shall be convicted of any offence  
" against this act, by which is incurred the forfeiture of any boat,  
" with her tackle and appurtenances, and concerning which, after  
" such conviction, no provision is hereby made, it shall and may  
" be lawful to and for such justice or justices of the peace, before  
" whom such conviction shall be had, or any other justice or jus-  
" tices of the peace of and for any county, city, division, liberty,  
" or place adjoining to the said river *Thames*, on conviction had,  
" and they are hereby respectively authorised and required to cause  
" such boat, with her tackle and appurtenances, to be totally burnt  
" and destroyed, within six days next after such conviction as  
" aforesaid, by warrant under the hand and seal or hands and  
" seals of such justice or justices, directed to the constable or  
" other peace-officer of the parish or place adjoining to the said  
" river, or where such conviction shall be had; which said con-  
" stable, or other peace-officer shall thereupon cause such boat,  
" tackle, and appurtenances to be so burnt and destroyed, within  
" the time aforesaid."

Any person  
may apprehend  
the offender.

† *Sect. 18.* By 2 Geo. 3. c. 28. s. 18. it is enacted, " That it  
" shall and may be lawful for any person or persons, by the autho-  
" rity of this act, and without any other warrant, to apprehend  
" any offender or offenders committing any of the offences herein-  
" before mentioned, and intended by this act to be redressed, and  
" with all convenient speed to convey or deliver every such of-  
" fender or offenders to a constable, or some other peace-officer  
" of the county, city, division, liberty, or place in or near to which  
" the offence shall be committed, or the offender or offenders  
" shall be apprehended, in order to be conveyed before some  
" justice of the peace for such county, city, liberty, or place,  
" there to be dealt with according to law."

Persons ob-  
structing the  
execution of the  
act guilty of  
FELONY.

† *Sect. 19.* By 2 Geo. 3. c. 28. s. 19. it is enacted, " That in  
" case any person or persons acting in the execution of any of  
" the powers granted by this act, shall be obstructed therein, every  
" person

“ person so obstructing, and all such as shall act in their assistance, shall, on being thereof convicted before the justices of the peace, at the general or quarter-session of the county or city adjoining to the said river, upon the oath of two or more credible persons, be transported to any of his majesty's plantations in *America*, for the space of seven years, according to the law or laws now in force for the transportation of felons.”

† *Sect. 20.* By 2 Geo. 3. c. 28. s. 20. it is further enacted, “ That in all actions, suits, trials, and other proceedings, which shall or may be had in pursuance of this act, or in relation to any matter or thing herein contained, any member of the said corporation, or any inhabitant of the parish, town, or place in which any offence shall be committed, contrary to the true intent and meaning of this act, or wherein any conviction shall be made pursuant hereto, shall be admitted to give evidence, and shall be deemed a competent witness, notwithstanding his being such member of the said corporation, or his or her being such inhabitant as aforesaid.”

What persons may be witnesses against offenders.

† *Sect. 21.* By 2 Geo. 3. c. 28. s. 21. it is also enacted, “ That in all cases where an oath is by this act directed to be taken by any person or persons, it shall and may be lawful for any one or more justice or justices of the peace within the county, city, division, liberty, or place, where the matter to be sworn to shall arise, and he and they is and are respectively hereby authorised and required to administer the same without fee or reward.”

Justices shall administer oaths gratis.

† *Sect. 22.* By 2 Geo. 3. c. 28. s. 22. it is further enacted, “ That if any action or suit shall be commenced or brought against any justice or justices of the peace, or the said master, wardens, and assistants, or any of them, or other officer or person whatsoever, acting in the execution of any of the powers in them hereby vested, for doing, or causing to be done, any thing in pursuance of this act, concerning any of the said offences, the same shall be laid in the county of *Middlesex*, or city of *London*, and not elsewhere; and shall be commenced within six months next after such cause of action accrued; and the defendant or defendants therein may plead the general issue, and give this act and the special matter, in evidence, at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act: and if it shall appear so to have been done, or that such action or suit was brought after the time before limited, or in any other place, that then the jury shall find for the defendant or defendants; and if upon such action a verdict shall be given for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her, or their action or suit, after the defendant or defendants shall have appeared; or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, then the defendant or defendants shall and may recover treble costs, and have such remedy for the same, as any defendant or defendants hath or have in any case by law.”

The time within which prosecutions must take place.

† *Sect. 23.* By 2 Geo. 3. c. 28. s. 23. it is further enacted, “ That this act shall be deemed, adjudged, and taken to be a public act.”

“ public

“public act; and be judicially taken notice of as such by all judges, justices, and other persons whomsoever, without the same being specially pleaded.”

Rex v. Wyatt,  
2 Term Rep.  
77.

† Sect. 24. It has been determined that the words of the twelfth and fourteenth sections of the above statute make the offence of buying or receiving any part of a ship's cargo, knowing the same to have been stolen, a *felony*; and therefore the court of king's bench will not bail a person committed for such felony. (1)

#### *Receiving Choses in Action.*

None of the statutes against receivers extended to the receipt of choses in action, but merely to goods and chattels; to remedy this defect, by the 3 Geo. 4. c. 24. s. 1. it is enacted, that “all persons who shall receive or buy any exchequer order or tally, or other order, entitling any other person or persons to any annuity or share in any parliamentary fund, or any exchequer bill, bank note, South Sea bond, East India bond, dividend warrant of the bank of England, South Sea company, East India company, or any other company, society or corporation, bill of exchange, navy bill or debenture, goldsmith's note for the payment of money, or other bond, order or warrant, bill or promissory note for payment of money, knowing the same to have been stolen, shall be liable to be prosecuted and punished respectively for felony or misdemeanor as the case may be, in like manner as persons receiving or buying stolen goods and chattels, knowing the same to have been stolen, are by the laws now in force liable to be prosecuted and punished.”

Provisions of former acts relative to searching, apprehending, &c. to be in force.

s. 2. enacts “that all powers, provisions, and enactments, contained in the several acts now in force, relative to the searching for and discovery of stolen goods and chattels, and to the apprehending, prosecuting, and punishing of persons receiving or buying stolen goods or chattels, knowing the same to have been stolen, shall extend, and be deemed and construed to extend, to the searching for and discovery of any such stolen order, tally, bill, bond, warrant, debenture, or note, and to the apprehending, prosecuting, and punishing of persons receiving or buying any such stolen order, tally, bill, bond, warrant, debenture, or note, knowing the same to have been stolen, in the same manner as if the said powers, provisions, and enactments were herein severally recited and re-enacted.”

3 Geo. 4. c. 24. s. 3. enacts, “That in all cases where the offence of persons buying or receiving stolen goods or chattels,

(1) The words of the statute, s. 12. do not make the buying or receiving a part of a ship's cargo, &c. a felony, yet sect. 14 seems to consider the guilty receivers as felons; for thereby any person stealing or unlawfully receiving such stolen goods knowingly, shall, on discovering two other offenders, be entitled to a pardon for all such felonies.

However, the legislature in another act, st. 39, 40 Geo. 3. c. 87. s. 22. which reciting that “whereas by st. 2 Geo. 3. c. 28. persons guilty of certain offences are punishable by transportation for four-

teen years, but the said offences not being by the said act declared to be felony, the trial thereof may in all cases be put off, by means of a traverse, to the next sessions after finding the bill of indictment for the same, and in the mean time the offender be bailed, &c.” for remedy whereof it is enacted, that the offender shall be tried without being allowed a traverse. It is observable that, by this act, the legislature assumes that the offences in the st. 2 Geo. 3. c. 28. are misdemeanors only, contrary to the decision in the case of Rex v. Wyatt.

“ chattels, or any stolen order, tally, bill, bond, warrant, debenture, or note, knowing the same to have been stolen, shall be deemed and construed to be felony; such offender shall and may be tried and convicted as well before as after the trial of the principal felon, and whether the said principal felon shall have been apprehended or shall be amenable to justice or not.”

Accessaries  
may be tried  
before principal  
convicted.

*Receiving Naval and Public Stores.*

† Sect. 1. By 9 and 10 Will. 3. c. 41. IT IS RECITED, “ That notwithstanding divers good laws made and enacted, for the preventing of the stealing and embezzlement of his majesty’s stores of war, and naval stores, those frauds, thefts, and embezzlements are frequently practised, and the convicting of such offenders is rendered difficult and impracticable, by reason it rarely happens that direct proof can be made of such offender’s immediate taking, embezzling, or carrying away any of his majesty’s said stores of war and naval stores out of or from his majesty’s store-houses, docks, yards, ships, ordnance, or other places for keeping and preserving the same, but only that such goods are marked with the king’s mark, and found in the custody and possession of the said person accused for stealing or embezzling the same, to the great encouragement of such wicked offenders, and to his majesty’s and the kingdom’s great damage: for preventing such embezzlements for the future, and for the more effectual execution of the laws and statutes already in force against such embezzlements and thefts, it is therefore enacted, that, from and after the four-and-twentieth day of *June*, one thousand six hundred and ninety-eight, it shall not be lawful to or for any person or persons whatsoever, other than persons authorized by contracting with his majesty’s principal officers or commissioners of the navy, ordnance, or victualling-office, for his majesty’s use, to make any stores of war or naval stores whatsoever, with the marks usually used to and marked upon his majesty’s said warlike and naval or ordnance stores; that is to say, any cordage of three inches and upwards, wrought with a white thread laid the contrary way, or any smaller cordage, to wit, from three inches downwards, with a twine in lieu of a white thread, laid to the contrary way as aforesaid, or any canvas wrought or unwrought, with a blue streak in the middle, or any other stores with the broad arrow, by stamp, brand, or otherwise, upon pain that every such person or persons who shall make such goods so marked as aforesaid, not being a contractor with his majesty’s principal officers or commissioners of the navy, ordnance, or victuallers, for his majesty’s use, or employed by such contractor for that purpose as aforesaid, shall, for every such offence, forfeit such goods, and the sum of two hundred pounds, together with costs of suit; one moiety whereof shall be to his majesty, and the other moiety to the informer, to be recovered by action of debt, bill, plaint, or information, in any of his majesty’s courts of record at *Westminster*, wherein no essoin, privilege, protection, wager of law, injunction, or order of restraint, nor more than one imparlance, shall be allowed.”

1 Geo. 1. c. 25.  
9 Geo. 1. c. 8.

No warlike or  
naval stores, ex-  
cept for the  
king’s use, shall  
be made with  
the king’s  
marks, &c.

Penalty.

† Sect.



## LARCENY.—*Receiving Naval and Public Stores.* Bk. 1.

Penalty on persons in whose custody such marked stores are found, &c.  
 2 *Ld. Ray.* 1104.  
 ' By 9 Geo. 1. c. 8. s. 3 and 4, the penalty of this act may be mitigated.'

† *Sect. 2.* By 9 and 10 Will. 3. c. 41. s. 2. it is further enacted, That such person or persons, in whose custody, possession, or keeping, such goods or stores marked as aforesaid shall be found, not being employed as aforesaid, and such person or persons who shall conceal such goods or stores marked as aforesaid, being indicted and convicted of such concealment, or of the having such goods found in his custody, possession, or keeping, shall forfeit such goods, and the sum of two hundred pounds, together with the costs of prosecution, one moiety to his majesty, and the other moiety to the informer, to be recovered as aforesaid, and shall also suffer imprisonment until payment and performance of the said forfeiture, unless such person shall, upon his trial, produce a certificate under the hand of three or more of his majesty's principal officers or commissioners of the navy, ordnance, or victuallers, expressing the numbers, qualities, or weights of such goods as he or she shall then be indicted for, and the occasion and reason of such goods coming to his or her hands or possession."

Commissioners of the navy, ordnance, &c. may sell any of the said stores so marked, &c.

† *Sect. 3.* By 9 and 10 Will. 3. c. 41. s. 4. it is further enacted, " That the said principal officers or commissioners of the navy, ordnance, or victualling-office for the time being, may sell and dispose of any of the stores aforesaid, so marked as aforesaid, as they did or might have done before the making of this act; and that such person or persons as heretofore have or shall hereafter buy any such stores, or other stores so marked as aforesaid, of the said principal officers or commanders, or by their order, may keep and enjoy the same without incurring the penalty of this act, or any law to the contrary whatsoever, upon producing a certificate or certificates under the hand and seal of three or more of the said principal officers or commissioners of the navy, ordnance, or victualling-office, that they bought such goods from them the said principal officers or commissioners, or from such person or persons as did buy the said stores from the said principal officers or commissioners, at any time before such stores were found in their custody; in which certificate or certificates the quantities of such stores shall be expressed, and the time when and where bought of the said commissioners, who, or any three or more of them, for the time being are hereby empowered and directed, from time to time, to give to such person or persons who shall desire the same, and have bought, and shall hereafter buy any of the aforesaid stores, within thirty days after the sale and delivery of the said stores so sold, or to be sold, as aforesaid."

King's stores may be lent to any ship in distress, so they be restored.

† *Sect. 4.* By 9 and 10 Will. 3. c. 41. s. 8. it is further enacted, " That nothing in this act contained shall be construed to hinder any the principal officers and commissioners of the navy, or any chief commander of any of his majesty's ships at sea, to lend any of his majesty's stores to any merchant ship or vessel in distress or otherwise, as might lawfully be done before the making of this act, in case such goods so lent be restored with all possible conveniency; and provided such person or persons so borrowing the said stores, from time to time have such certificate

"ficate as aforesaid, which the said principal officers and commissioners of the navy, or commander in chief, are hereby required to give to the party or parties that shall so borrow the same." [This made a public act by 1 Geo. 1. sess. 2. c. 25. 9 Geo. 1. c. 8. sect. 14.]

† Sect. 5. By 1 Geo. 1. st. 2. c. 25. s. 3. it is further enacted, That the said principal officers and commissioners of his majesty's navy, or any one or more of them, shall have hereby power to enquire, and by warrant under his or their hands and seals, to empower any person or persons to search for the same in all places, in like manner as justices of peace may do in case of felony, and punish the offenders by such fine and imprisonment, as aforesaid, the value of the goods so imbezilled or filched away not exceeding the sum of twenty shillings, and cause the goods to be brought in again, and if the offence be of such nature as doth require an higher and severer punishment, then that they, any one or more of them, may commit such offender to the next gaol, or to the custody of their messenger or messengers aforesaid, till he or they offending enter into recognizance with surety or sureties, according to the nature of the offence, to appear and answer to the same in his majesty's court of exchequer or other court, where his majesty shall question him or them for the same, within one year following, or process duly served for that purpose on such offender or offenders."

The said officer empowered to inquire of the imbezillment of naval stores and punish the offenders.

† Sect. 6. By 1 Geo. 1. st. 2. c. 25. s. 4. it is further enacted, That the treasurer, comptroller, surveyor, clerk of the acts, and commissioners of the navy, for the time being, or any one or more of them, where the goods so imbezilled, taken, or carried away, shall be under the value of twenty shillings, shall have full power and authority, upon the oath of one or more witnesses (which they or any of them have hereby power to administer,) or confession of such party so offending, as aforesaid, or other legal proof thereof, to convict the party or parties so offending, by writing under his or any of their hands and seals, and to impose such fine or fines upon all or every such person or persons so offending and convicted, as aforesaid, as to the said treasurer, comptroller, surveyor, clerk of the acts, and the commissioners of the navy, for the time being or any one or more of them, shall in his or their discretion seem meet; the said fine or fines not exceeding double the value of the naval goods, provisions, victuals, stores, or ammunition so imbezilled, or carried away; which fine or fines shall be levied by distress and sale of the goods of such offender, by virtue of the warrant of such officer or officers who shall so convict the said offender, directed in manner aforesaid, to the person or persons aforesaid, returning the overplus, if any there be, to the owner of such goods; or in case no sufficient distress can be found, as aforesaid, the party or parties so offending shall, by virtue of the warrant of such officer before whom such person or persons shall be convicted, be imprisoned in the next gaol for any space of time not exceeding three months, without bail or mainprize."

When the goods imbezilled are under the value of twenty shillings, offender shall be fined.

Fine to be levied by distress, and for want thereof, imprisonment for three months.

† Sect.

Naval stores im-  
bezilled and put  
on shipboard  
shall be seized  
by warrant of  
the said treasur-  
er, &c.

† Sect. 7. By 1 Geo. 1. st. 2. c. 25. s. 5. it is further enacted,  
“ That the said treasurer, comptroller, surveyor, clerk of the acts,  
“ and commissioners of the navy for the time being, or any one  
“ or more of them, upon oath of one or more credible witnesses  
“ (which he and they have hereby power to administer), testifying,  
“ That his majesty’s naval goods, stores, ammunition, or naval pro-  
“ visions, or any part thereof, are conveyed into any ship or ves-  
“ sel whatsoever, and mentioning the name of such ship or vessel  
“ being at anchor, and not ready to sail that tide, within any of  
“ the roads, harbours, creeks, or rivers, within his majesty’s do-  
“ minions, or any person or persons by their or one of their war-  
“ rant or warrants (in which warrant or warrants the quantity or  
“ quality of such goods shall be specified), thereunto authorized  
“ and appointed in the day-time, shall have full power and autho-  
“ rity to go on board any such ship or vessel whatsoever, being  
“ within any of the places aforesaid; and in case resistance or  
“ refusal be made upon demand, to enter and break open the  
“ hatches and cabins, or other places of such ship or vessel, and  
“ search therein for any such naval goods, stores, ammunition, or  
“ provisions belonging to his majesty’s navy, which have been im-  
“ bezilled, purloined, and taken away; and the same to seize,  
“ take, and carry away to any of his majesty’s yards or storehouses,  
“ to be applied to his majesty’s use, unless the said officers and  
“ commissioners, upon hearing the matter, shall find they were  
“ unduly seized, and thereupon restore them to the party claim-  
“ ing the same, which they are hereby empowered to do.”

† Sect. 8. By 9 Geo. 1. c. 8. s. 3. which recites the two statutes  
above-mentioned, it is enacted, “ That if any person or persons  
“ shall be lawfully convicted of having in his, her, or their cus-  
“ tody, any timber, thick stuff, or plank, marked with the broad  
“ arrow, by stamp brand, or otherwise, or of concealing any tim-  
“ ber, thick stuff, or plank so marked, every such person so of-  
“ fending shall suffer, forfeit, and pay, as for having, keeping, or  
“ concealing any other warlike, naval, or ordnance stores contrary  
“ to the said act.”

† Sect. 9. By 9 Geo. 1. c. 8. s. 4. it is further enacted, “ That  
“ it shall and may be lawful to and for any judge, justice, or jus-  
“ tices, before whom any offender or offenders shall be convicted  
“ of any of the crimes or offences before recited, enacted, or  
“ mentioned in this act, to mitigate the penalty for the same, as he  
“ or they shall see cause, and to commit the offender or offend-  
“ ers so convicted to the common gaol of the county or place  
“ where the offence shall be committed, there to remain without  
“ bail or mainprize until payment be made of the penalty and for-  
“ feiture imposed by this or the said former act, or mitigated as  
“ aforesaid, or to punish such offender or offenders corporally,  
“ by causing him, her, or them to be publicly whipped, or com-  
“ mitted to some public workhouse, there to be kept to hard  
“ labour for the space of six months, or a less time, as to such  
“ judge, justice, or justices, in his or their discretion shall seem  
“ meet; any thing in the said recited act, or in any other act, to  
“ the contrary notwithstanding.”

† Sect.

† Sect. 11. By 9 Geo. 1. c. 8. s. 5. it is further enacted, Justices of assize or quarter-sessions may try offences relating to the stores, &c.  
 “ That where any dispute shall arise between the persons upon  
 “ whose informations or oaths any person or persons offending  
 “ in the premises, or against the said former act, shall be prose-  
 “ cuted and convicted, touching any right or title to any of the  
 “ forfeitures or penalties before mentioned, or any part thereof,  
 “ the judge, justice, or justices before whom such offender or  
 “ offenders shall be convicted, shall examine the matter, and  
 “ finally determine the same.”

† Sect. 12. By 17 Geo. 2. c. 40. s. 10. for explaining and amending the said statutes of 9 and 10 Will. 3. c. 41. and 9 Geo. 1. c. 8. it is enacted, “ That it shall and may be lawful to and for  
 “ any judge, justice, or justices at the assizes, or justices of the  
 “ peace at the general quarter-sessions to be holden for any  
 “ county, city, borough, or town-corporate, to hear, try and de-  
 “ termine, by indictment or otherwise, all or any the crimes or  
 “ offences mentioned in the said recited acts; and that the said  
 “ judge, justice, or justices of assize, or justices of peace as afore-  
 “ said, before whom such offender or offenders shall be indicted,  
 “ or tried and convicted of all or any the crimes or offences in the  
 “ said recited acts mentioned, may impose any fine, not exceeding  
 “ the sum of two hundred pounds, on such offender or offenders;  
 “ one moiety to be paid to his majesty, and the other moiety to the  
 “ informer; and may mitigate the said penalty and forfeitures  
 “ inflicted by the said recited acts, or either of them, and to com-  
 “ mit the offender or offenders so convicted and fined to the com-  
 “ mon gaol of the county or place where the offence shall be  
 “ committed; there to remain without bail or mainprize until  
 “ payment be made of the penalty and forfeitures imposed by  
 “ this or the said former acts, or mitigated as aforesaid; or in  
 “ lieu thereof, to punish such offender or offenders in the pre-  
 “ mises corporally by causing him, her, or them to be publicly  
 “ whipped, and committed to some house of correction or public  
 “ workhouse, there to be kept to hard labour for the space of three  
 “ months, or less time, as to such judge, justice, or justices of  
 “ assize, or justices of the peace, shall in his or their discretion  
 “ seem meet; any thing in the said recited acts, or in any other  
 “ acts, to the contrary notwithstanding.”

† Sect. 13. By 9 Geo. 3. c. 30. s. 5. for the more speedy and effectual bringing to justice persons who shall be guilty of stealing or embezzling his majesty's naval stores, IT IS ENACTED, “ That  
 “ it shall and may be lawful to and for the treasurer, comptroller,  
 “ surveyor, clerk of the acts, or any commissioner of the navy for  
 “ the time being, and they are hereby respectively authorized  
 “ and empowered, from time to time, in all places whatsoever,  
 “ to do, perform, exercise, and execute, the office and duty of a  
 “ justice or justices of the peace, to all intents and purposes  
 “ whatsoever, in causing any person or persons who shall, at any  
 “ time or times, be charged with stealing or embezzling any naval  
 “ stores, the property of his majesty, his heirs, or successors, to  
 “ be apprehended, committed, and prosecuted for the same; and  
 “ all constables, headboroughs, keepers of gaols and prisons, and  
 “ all other officers whatsoever, shall, and they are hereby respec-  
 “ tively

Treasurer and other officers of the navy, empowered to act as justices in any of the cases here mentioned.

"tively required, from time to time, diligently to execute, perform, and obey, all such warrant and warrants as shall be made, directed, issued, or given to them, or any of them, by any one or more of the persons aforesaid, touching any of the matters and things hereinbefore contained."

Rex v. Blackman at *nisi prius*, Hilary Term, 34 Geo. 3.

† Sect. 14. It is said, that if a peace-officer, who in searching for other goods discovers naval stores, and an information is filed in pursuance of such discovery from him, he is to be deemed the informer within the meaning of the statute 17 Geo. 2. c. 4. s. 10.

Rex v. Blackman.

† Sect. 15. It is said also, that although the statute 17 Geo. 2. c. 40. leaves an option in the judge either to inflict corporal punishment or impose a fine, the expectation of a share of such fine will render a witness incompetent on an information founded on 9 and 10 Will. 3. c. 41.

Rex v. Innell and Another, Kent Lent Assizes, 1793, *coram* HOTHAM, Baron

† Sect. 16. It is also said, that the commissioners of the navy cannot grant a warrant of commitment against any person for having naval stores in his custody, contrary to 9 and 10 Will. 3. c. 41. until an indictment has been preferred and found against such offender.

Willis's case, Hicks's Hall, Oct. Sessions, 1791.

† Sect. 17. It seems also agreed, that although the indictment state that the prisoner "then or at any time before, not being a contractor with or authorized by the principal officers or commissioners of our said lord the king, of the navy, ordnance, or victuallers or victualling-office, for the use of our said lord the king, to make any stores of war," &c. yet that it is not incumbent on the prosecutors to prove this *negative averment*, but that it is incumbent on the defendant to shew, if the truth be so, that he is within the exception in the statute.

Every person not being a contractor, and who shall knowingly, &c. sell or deliver, or receive or have in his possession any naval, ordnance, or victualling stores, &c. in a raw state, or new, or not more than one-third worn, and such person who shall conceal the same, shall be deemed a receiver of stolen goods, and be transported for 14 years.

The statute 39 and 40 Geo. 3. c. 89. s. 1. reciting the acts of the 22 Car. 2. c. 5—9 and 10 W. 3. c. 41—9 Geo. 1. c. 8— and 17 Geo. 2. c. 40. s. 10. and that "notwithstanding the penalties and punishments inflicted by the said recited acts, the stealers, embezzlers, and receivers of his majesty's warlike and naval, ordnance, and victualling stores had greatly increased, so that it became necessary to make some further and more effectual provision for preventing their wicked practices in future;" enacts, "That from and after passing of the act (28th July, 1800), every person or persons (such person or persons not being a contractor or contractors, or employed as in the said recited act of the 9 and 10 W. 3. is mentioned), who shall willingly or knowingly sell or deliver, or cause or procure to be sold or delivered, to any person or persons whomsoever; or who shall willingly or knowingly receive or have in his, her, or their custody, possession, or keeping, any stores of war, or naval, ordnance, or victualling stores, or any goods whatsoever marked as in the said recited acts are expressed, or any canvas marked either with a blue streak in the middle, or with a blue streak in a serpentine form, or any bawper, otherwise called buntin, wrought with one or more streaks of raised tape; (the said stores of war, or naval, ordnance, or victualling stores, or goods above-mentioned, or any of them, being in a raw or unconverted

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“ unconverted state, or being new, or not more than one-third worn;) and such person or persons who shall conceal such stores or goods, or any of them, marked as aforesaid, shall be deemed receivers of stolen goods, knowing them to have been stolen, and shall, on conviction, be transported beyond the seas for the term of fourteen years, in like manner as other receivers of stolen goods are directed to be transported, &c., unless such person or persons shall upon their trial produce a certificate under the hands of three or more of his majesty’s principal officers or commissioners of the navy, ordnance, or victualling, expressing the numbers, quantities, or weights of such stores or goods as they shall then be indicted for, and the occasion or reason of such stores or goods coming to their hands or possession.”

By s. 2. “ such person or persons (not being a contractor or contractors, or employed as aforesaid), in whose custody, possession, or keeping, any of the said stores, called canvas, marked with a blue streak in a serpentine form, or bewper, otherwise called buntin, wrought as above mentioned, shall be found, (such canvas or bewper, &c. not being charged to be new, or not more than one-third worn,) and all and every person or persons who shall be convicted of any offence contrary to so much of the said recited act of the 9 and 10 W. 3. as relates to the making, or the having in possession or concealing any of his majesty’s warlike, or naval, or ordnance stores, marked as therein specified, shall, besides forfeiting such stores and £200, and costs as therein mentioned, be corporally punished by (1) pillory, whipping, and imprisonment, or by any or either of the said ways and means, in such manner, and for such space of time, as to the judge or justices before whom such offender, &c. shall be convicted, shall seem meet, &c. Provided, that such judge or justices may mitigate the said penalty of £200 as they shall see cause.”

“ Provided (s. 3.) that nothing in this act, or in the said recited act of the 9 and 10 W. 3. shall be deemed to extend to exempt from the operations of this or the said recited act, any person or persons being contractors, or employed as in the said last mentioned act is mentioned, except only so far as concerns stores or goods, marked as aforesaid, which shall be *bonâ fide* provided, made up, or manufactured by such persons, or by their order, and which shall not have been before delivered into his majesty’s store; unless, having been so delivered, they shall have been sold or returned to such persons by the commissioners of his majesty’s navy, ordnance, or victualling, respectively.”

Section 4. enacts, “ That if any person or persons shall, from and after the passing of this act, (28th July, 1800,) wilfully and fraudulently destroy, beat out, take out, cut out, deface, obliterate, or erase, wholly or in part, any of the marks in the said act of the 9 and 10 Will. 3. or in this act mentioned, or any other mark whatsoever denoting the property of his majesty, &c. in or to any warlike or naval, ordnance, or victual-

“ling stores; or cause, procure, employ, or direct any other person or persons so to do, for the purpose of concealing his majesty's property in such stores; such person or persons shall be deemed guilty of felony, and shall, on conviction, be transported to parts beyond the seas for fourteen years, in like manner as other felons,” &c.

By sect. 5. “If any person or persons hereafter convicted of any offence contrary to this act, for which he shall not have been transported, or contrary to the said recited act of the 9 and 10 W. 3, shall be guilty of a second offence, either contrary to that act or the present act, which would not otherwise, as the first offence, subject them to transportation, and shall be thereof legally convicted; such person or persons shall, by judgment of the court wherein they shall be so convicted, be transported for fourteen years, in like manner as other offenders,” &c.

By sect. 6. “Persons so transported, &c. returning into any part of Great Britain or Ireland before the expiration of the term, &c. shall suffer as felons, and have execution awarded against them as persons attainted of felony, without benefit of clergy.”

“Provided (s. 7.) that it shall and may be lawful for the court before whom any offender shall be indicted and convicted of all or any of the crimes or offences herein-before mentioned to be punishable with transportation, to mitigate or commute such punishment, by causing the offender or offenders to be set on the pillory, publicly whipped, fined, or imprisoned, or by all or any one or more of the said ways and means, as such court in its discretion shall think fit; one moiety of which fine (if any imposed) shall be to his majesty, &c. and the other moiety to the informer; and also to order such offender or offenders to be imprisoned until such fine be paid.”

By sect. 8. “Persons discovering to the navy, ordnance, or victualling boards, or apprehending, or first informing against any offenders guilty of stealing or embezzling such stores, or of any of the offences mentioned in the said statute 9 and 10 Will. 3. or in the present act before mentioned, which shall not be prosecuted in the summary way after prescribed, shall on conviction receive, for every such offence so discovered, £20, over and above any share of penalty or fine they may be entitled to as informers, so as the same do not amount to more than £20, or (if amounting to more than £20) shall fail to be paid by the offenders on whom inflicted for three calendar months after conviction, or if they be detained by sentence of imprisonment, for three calendar months next after the expiration of such sentence.” And by sect. 9. “disputes respecting the title to such rewards shall be determined by any of the commissioners of the navy, &c. on oath before the same, or any justice of peace.” By sect. 10. “the commissioners of the navy, &c. shall cause such reward to be paid by the treasurer of the navy or ordnance, on producing a certificate under the hand of the clerk of assize, or other proper officer of the court

“ court before whom such offenders shall be tried, certifying the conviction, and that the informer’s share of any penalty or fine inflicted on such offender or offenders, does not amount to more than £20; or, if amounting to more, hath failed to be paid by such offender or offenders for three months after conviction, or if imprisoned by sentence, for three months after the expiration of such imprisonment; for which certificate the said clerk, &c. shall charge no more than five shillings.”

By sect. 11. “ Any commissioners of the navy, &c. or justice of peace, may grant warrants to search houses, ships, &c. in the day-time; and in case any stores or goods marked as before mentioned shall on search be found, to cause the same and the offenders to be brought before such commissioner or justice of peace, to be bound over,” &c.

The act then proceeds to create several misdemeanors; amongst others, the not accounting to the satisfaction of such commissioners or justice for the possession of such stores, &c.; which misdemeanors are determinable in a summary manner before the same persons: and by s. 18. authority is given to any such principal officer or commissioner of the navy, &c. or justice of peace, &c. “ to hear and determine any complaint against any person (not being a contractor or employed as aforesaid) for unlawfully selling or delivering, or causing or procuring to be sold or delivered, or for receiving or having in their custody, possession, or keeping, or for concealing, any stores of war, or naval, ordnance, or victualling stores or goods marked as aforesaid, of any value, in the whole not exceeding 20s.” And on conviction (founded on complaint exhibited within three calendar months after the offence committed) they are empowered to inflict a fine on the offender, to be levied as therein mentioned; from which an appeal is given to the quarter-sessions. And then, by s. 24. it is “ enacted and declared, that nothing therein-before contained, which gives to any commissioner or justice, &c. authority to hear and determine offences in a summary way, shall extend to prevent parties accused of selling or delivering, or having in their custody, possession, or keeping, or of receiving or concealing, any of the stores marked as above mentioned, under the value of 20s., from being prosecuted as receivers of stolen goods under this act, or for unlawfully having the same in their custody, or concealing the same, under the said acts of the 9 and 10 W. 3., 9 Geo. 1., or 17 Geo. 2. in any court of record, oyer and terminer, or otherwise, as they might have been if no such authority had been given; or to take away from any person or court any power, &c. or authority which they had for the hearing and determining offences, in case no authority to hear and determine the same in a summary way had been given; so as that the same person shall not be punished twice for the same offence.”

By the 29th sect. the provisions of the act are extended to Scotland.

#### *Public Stores.*

By the 55 Geo. 3. c. 127. it is enacted, that “ from and after  
“ the



Provisions of  
former acts  
extended to all  
public stores.

" the passing of that act, not only the said recited act of  
 " the ninth and tenth year of the reign of King William the  
 " Third, but also the said several other acts of the ninth  
 " year of the reign of King George the First, the seven-  
 " tenth year of the reign of King George the Second, and  
 " the fortieth year of the reign of his present Majesty, herein-  
 " before recited, so far as the same severally relate to his Ma-  
 " jesty's naval, ordnance, and victualling stores therein respec-  
 " tively mentioned, and all the pains, penalties, forfeitures, regu-  
 " lations, restrictions, powers, provisions, clauses, matters, and  
 " things therein respectively contained, relating to his Majesty's  
 " naval, ordnance, and victualling stores therein respectively  
 " mentioned, shall extend or be construed to extend to all public  
 " stores whatsoever, under the care, superintendence, or con-  
 " trol of any officer or person in the service of his Majesty, his  
 " heirs or successors, or employed in any public department or  
 " office, either marked with the marks or any of them in the said  
 " recited acts or any of them specified, or with the broad arrow,  
 " and the letters B. O., or with a crown and the broad arrow, or  
 " with his majesty's arms, or with the letters G. R., to denote  
 " the property of his majesty, his heirs or successors, therein,  
 " and to all and every person and persons, not authorized by the  
 " proper officer or officers, person or persons in his majesty's  
 " service, in that behalf so to do, using any such marks or making  
 " any goods marked with such marks, or any of them, and to all  
 " and every person and persons in whose custody, possession, or  
 " keeping any such public stores so marked as aforesaid shall be  
 " found, or who shall willingly or knowingly receive or have in  
 " his, her, or their custody, possession, or keeping, or who shall  
 " conceal any such public stores so marked as aforesaid, unless  
 " such person or persons shall upon his, her, or their trial, pro-  
 " duce a certificate or certificates under the hand or hands of the  
 " proper officer or officers, person or persons in his majesty's  
 " service authorized to grant the same, of such and the like  
 " nature as the certificate in the said recited acts of the ninth  
 " and tenth year of the reign of King William the Third, and  
 " fortieth year of the reign of his late majesty mentioned, and to  
 " all and every person and persons who shall wilfully and fraudu-  
 " lently destroy, beat out, take out, cut out, deface, obliterate,  
 " or erase, wholly or in part, any of the said marks; or cause,  
 " procure, employ, or direct any other person or persons so to  
 " do, for the purpose of concealing the property of his majesty,  
 " his heirs or successors, therein, as fully and effectually to all  
 " intents and purposes, as if all the same several pains, penalties,  
 " forfeitures, regulations, restrictions, powers, provisions, clauses,  
 " matters, and things in the said several acts contained, so far as  
 " the same severally relate to his majesty's naval, ordnance, and  
 " victualling stores, and the punishment of persons offending in  
 " manner therein mentioned, were herein and hereby severally  
 " repeated and re-enacted in respect to all other public stores  
 " whatsoever." s. 2.

Upon these statutes the question which generally occurs is,  
 what shall be a receiving or having? By the other statutes of  
 William and Anne and Geo. 2. &c. relating to goods generally,  
 and

and those particularly therein described, the words are, “receive” or buy.” Therefore to constitute a guilty receiver, it is not necessary that he should be a “purchaser” of the stolen goods; if he receives them from any other unlawful motive, as to conceal them with a view of preventing the detection of the principal felon, he is equally a guilty receiver. But in order to make a man a guilty receiver, there must be some evidence on the part of the prosecution, positive or inferential, from which the jury may collect the receipt was *malo animo*. But with respect to public stores the case is different; the *onus probandi* is thrown upon the defendant; for the king’s stores all having a known visible mark, which no one else is permitted to use, the bare fact of possessing them calls upon the possessor to give evidence of his having a legal right of possession; which strictly ought to be done as is directed by the acts, if a purchaser or sub-purchaser, by shewing the certificates. But even in a case where the purchaser could not shew, by the evidence required by the acts, a legal right of possession, a defendant has been admitted to rebut the fact of guilty possession by other evidence. A widow woman was indicted before Mr. J. Foster, on the stat. 9 and 10 W. 3. for having in her custody divers pieces of canvass having the king’s mark, she not being a person employed by the commissioners of the navy to make the same for the king’s use. The fact of her possession was clearly proved; and she rested her defence upon proof of the following facts: That it was common for the commissioners of the navy to sell old canvass, when unfit for use, in lots, some larger, some smaller; that the canvass had, during her husband’s life-time, been in public use in the family, as sheeting and table linen, without concealment, and that she came to it as part of her late husband’s property; but she produced no certificate as is required by the act. This evidence was opposed by the counsel for the crown, on the ground, that by the second section of the act no other exculpatory evidence than the production of the commissioners’ certificate, if it had been really bought of them, could be a legal defence. The learned judge, however, thought it would be a harsh construction of the law to exclude all other evidence of innocence, and consider a person as guilty who had perhaps neglected to take, or had lost a certificate. At all events, as the canvass came to the woman by act of law, and not by any act of her own, he thought it fit evidence to be left to the jury, directing them, that if they thought the defendant came to the possession without any fraud on her part, they should acquit her—which they did.

*Taking a Reward to restore Stolen Goods.*

† Sect. 1. (1) By 4 Geo. 2. c. 1. s. 4. IT IS RECITED, “That Persons taking there are several persons who have secret acquaintance with felons, rewards for and

(1) This statute originated in the practices of the notorious Jonathan Wild, who had established himself as a broker between thieves and the party whose goods had been stolen; the thieves regularly bringing their plunder to Wild, and the party robbed as regularly applying to him, and negotiating the terms upon which the property was to be

restored. The statute was peculiarly levelled at him and his practices; but though it is said he had acquired considerable wealth, he had not the resolution to forbear, but continuing his course, he was convicted and executed upon this act. He was tried at the Old Bailey, May sessions, 1725, on the statute of 10 and 11 Will. 3. for privately stealing a box

helping to stolen goods guilty of felony.

and who make it their business to help persons to their stolen goods, and by that means gain money from them, which is divided between them and the felons, whereby they greatly encourage such offenders :” and therefore ENACTED, “ That wherever any person taketh money or reward, directly or indirectly, under pretence or upon account of helping any person or persons to any stolen goods or chattels, every such person so taking money or reward as aforesaid, (unless such person doth apprehend, or cause to be apprehended, such felon who stole the same, and cause such felon to be brought to his trial for the same, and give evidence against him,) shall be guilty of felony, and suffer the pains and penalties of felony, according to the nature of the felony committed in stealing such goods, and in such and the same manner as if such offender had himself stole such goods and chattels, in the manner, and with such circumstances as the same were stolen.”

Prosecuting to conviction any person for taking a reward for helping to stolen goods, shall be entitled to 40l. 4 Geo. 1. c. 11. sect. 4.

† Sect. 2. By 6 Geo. 1. c. 23. s. 9. IT IS RECITED, “ That the practice of taking money to help persons to their stolen goods, and sharing it with the felons, is still continued in defiance of the laws, and to the encouragement of felons :” and therefore ENACTED, “ That whoever shall discover, apprehend and prosecute to conviction of felony without benefit of clergy, any person or persons for the said offence of taking money or other reward; directly or indirectly, to help any person or persons to their stolen goods, (such offender not having apprehended the felon who stole the same, and brought him or her to trial, for the same, and given evidence against him or her as required by law,) shall be entitled to a reward of forty pounds for every such offender so convicted as aforesaid, and shall have the like certificate and like payments made without fee or reward as any person or persons may be intitled unto for the apprehending, prosecuting and convicting of highwaymen by any law or laws for that purpose.” (2)

In the case of *Rex v. Drinkwater*, Old Bailey Sessions, Oct. 1740, it was doubted, the principal felon being dead, and not having been convicted of the offence, whether the person receiving the reward to help to the stolen goods could be convicted. The report of the case (in 1 Leach, C. C. L. 21, 22.) states that the court thought the objection of great importance, and that, though the opinion of the judges was never publicly stated, the prisoner, after being some time in gaol, was discharged. From this it should seem the judges thought the objection well founded. But Mr. East justly observes that the very terms of the statute itself preclude the supposition of the conviction of the principal being a necessary preliminary to the trial and punishment of the offender under this statute, for it states, that the offender, “ *unless he doth apprehend, or cause to be apprehended, the felon who stole the goods, and cause such felon to be brought to trial for the same,* and

box of lace in the shop of Catharine Statham ; but it appearing from the testimony of H. Kelly, the principal felon, who had actually stolen the lace and was admitted king's evidence, that Wild was not in the shop at the time, but waited at the corner of the street to receive the goods, he was acquitted

on this indictment : but was immediately tried and convicted on the above statute 4 Geo. 2. for receiving ten guineas from Catharine Statham as a reward for helping her to the stolen goods.

(2) See stat. 58 Geo. 3. c. 70.

*and give evidence against him, shall be guilty of felony.*" He therefore presumes that the true ground of the doubt in that case was, "because by the death of the principal the stipulated condition had become impossible to be performed, without any default in the defendant." (2 East, P. C. 771.)

In prosecutions on this statute, it seems proper to aver that the defendant had not apprehended or caused to be apprehended the principal, &c. such reservation being in the enacting clause, and part of the description of the offence. (*Idem.*)

*Advertising a Reward for the Restoration of Stolen Goods.*

By 25 Geo. 2. c. 36. IT IS RECITED, "That the advertising a reward with no questions asked, for the return of things which have been lost or stolen, is one great cause and encouragement of thefts and robberies;" and therefore ENACTED, "That any person publicly advertising a reward with no questions asked, for the return of things which have been stolen or lost, or making use of any words in such public advertisement, purporting that such reward shall be given or paid without seizing or making enquiry after the person producing such thing so stolen or lost, or promising or offering, in any such public advertisement, to return to any pawnbroker, or other person, who may have bought or advanced money by way of loan upon such thing so stolen or lost the money so paid or advanced, or any other sum of money or reward for the return of such thing, and any person printing or publishing such advertisement, shall respectively forfeit the sum of fifty pounds for every such offence to any person who will sue for the same."

Person advertising a reward for return of things stolen or lost, &c.

and the printer to forfeit 50l.

*Restitution of Stolen Goods.*

Be it enacted, "that if any felon or felons hereafter do rob or take away any money, goods, or chattels from any of the king's subjects, from their person or otherwise, within this realm, and thereof the said felon or felons be indicted and after arraigned of the same felony and found guilty thereof, or otherwise attainted, by reason of evidence given by the party so robbed, or owner of the said money, goods, or chattels, or by any other by their procurement, that then the party so robbed or owner shall be restored to his said money, goods, and chattels; and that as well the justices of gaol delivery as other justices afore whom any such felon or felons shall be found guilty, or otherwise attainted, by reason of evidence given by the party so robbed or owner, or by any other by their procurement, have power by this present act to award from time to time writs of restitution for the said money, goods, and chattels, in like manner as though any such felon or felons were attainted at the suit of the party in appeal." 21 H. 8. c. 11.

The writ of restitution is now disused, and it is the practice for the court to order restitution to the prosecutor of all the goods produced in court at the trial; and the owner may maintain trover for any not restored, notwithstanding even a sale of them in market overt. The restitution, however, can only be had

Cas. Temp.  
Hardw. 349.  
1 Hale, 543. 6.  
4 Black. Com.  
363.  
Kel. 38.  
2 In. 714.  
Horwood v.  
Smith, 2 T. R.  
750.

had from the person who is in possession at the time of the attainder, and therefore if a person has *bona fide* purchased stolen goods in market overt, and has sold them again before conviction, no action will lie against him for them even though notice was given him not to sell. So where the thief has sold the goods stolen, and the money clearly the produce of them is found in his possession, it has been usual to order the restitution of the money, as being within the equity of the statute giving restitution. (*Hanberrie's Case*, Cro. Eliz. 661.)

But the statute only extends to goods stolen, and not to a restitution of goods obtained by fraud, upon conviction of the offender in the latter case. (*Parker v. Patrick*, 5 T. R. 175.)

See further upon this subject, Bk. 2. c. 23.

### *Restitution of Stolen Horses.*

In cases of horses being stolen, a special provision is made for their restitution by stat. 31 Eliz. c. 12. which, for preventing horse-stealing, requires certain entries to be made, &c. in the tollers' books of the sales of horses in markets and fairs, and by s. 4. provides "That if any horse, mare, gelding, colt, or filly, shall be stolen, and after shall be sold in open fair or market, and the same sale shall be used in all points and circumstances as aforesaid, that yet nevertheless the sale of any such horse, &c. within six months next after the felony done, shall not take away the property of the owner from whom the same was stolen, so as claim be made within six months by the party from whom the same was stolen, or by his executors or administrators, or by any other of their appointment, at or in the town or parish where the same horse, &c. shall be found, before the mayor or other head officer of the same town or parish, if the same horse, &c. shall happen to be found in any town corporate or market town, or else before any justice of peace of that county near to the place where such horse, &c. shall be found, if it be out of a town corporate or market town; and so as proof be made within forty days then next ensuing by two sufficient witnesses, to be produced and deposed before such head officer or justice, (who by virtue of this act shall have authority to minister an oath in that behalf,) that the property of the same horse, &c. so claimed, was in the party by or from whom such claim is made, and was stolen from him within six months next before such claim of any such horse, &c. but that the party from whom the said horse, &c. was stolen, his executors or administrators, shall and may at all times after, notwithstanding any such sale or sales in any fair or open market thereof made, have property and power to have, take again, and enjoy the said horse, &c. upon payment or readiness, or offer to pay, to the party that shall have the possession and interest of the same horse, mare, gelding, colt, or filly, if he will receive and accept it, so much money as the same party shall depose and swear before such head officer or justice of peace, (who by virtue of this act shall have authority to minister and give an oath in that behalf,) that he paid for the same

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“same bond *fide*, without fraud or collusion; any law, statute, or other thing to the contrary notwithstanding.”

To prevent larcenies of cattle and horses certain regulations are made for slaughter-houses by the stat. of 26 Geo. 3. c. 71.

## CHAP. XX.

### OF PIRACY.

† Sect. 1. A PIRATE is one who, to enrich himself, either by surprize or open force, sets upon merchants or others trading by sea, to spoil them of their goods or treasure; and he is called *hostis humani generis*, and therefore every nation between whom amity and peace subsist, although there is no actual alliance, may punish a subject or foreigner for this offence.

8 St. Tr. 74.  
*notis.*  
Kidd's Case,  
8 St. Tr. 208.  
213.

† Sect. 2. PIRACY, if committed by a subject, was formerly held to be a species of treason, being contrary to his natural allegiance; if by an alien, to be felony only: but since the statute of treason 25 Edw. 3. c. 2. it is held to be only felony in a subject; and to this common-law offence the legislature has also added some others.

3 Inst. 113.  
4 Com. 71.

But for the better understanding this subject I shall consider,

1. Who shall be deemed pirates.
2. Before what court they shall be tried.
3. In what manner they shall be punished.
4. Of the means which may be used to prevent piracy.

As to THE FIRST POINT, *viz.* Who shall be deemed pirates.

† Sect. 3. A PIRATE, at the common law, is a person who commits any of those acts of robbery and depredation upon the high seas, which if committed on land would have amounted to felony there.

Sect. 4. By 28 Hen. 8. c. 15. it is enacted, “That all treasons, felonies, robberies, murders, and confederacies committed in or upon the sea, or in any other river, haven, creek, or place where the admiral or admirals have or pretend to have power, authority or jurisdiction, shall be tried as directed by the act.”

See post.

Sect. 5. But by s. 4. it is provided, “That this act shall not extend to be prejudicial or hurtful to any person or persons for taking any victuals, cables, ropes, anchors or sails, which any such person or persons (compelled by necessity) taketh of or in any ship which may conveniently spare the same, so the same person or persons pay out of hand for the same victual, cables, ropes, anchors or sails, money or money-worth to the value of the thing so taken, or do deliver for the same a sufficient bill obligatory to be paid in form following, that is to say, if the taking of the same things be on this side the straits of  
“Marrooke,

Taking of things that may be spared upon necessity, and paying for them.

"*Marroke*, then to be paid within four months, and if it be beyond the said straits of *Marroke*, then to be paid within twelve months next ensuing the making of such bills, and that the makers of such bills well and truly pay the same debt at the day to be limited within the said bills."

Subjects committing piracy on others of the king's subjects by commission from any foreign prince, shall be adjudged pirates.

† *Sect. 6.* It being also doubted by many eminent civilians whether, during the revolution, the persons who had captured English vessels by virtue of commissions granted by *James the Second* at his court at *St. Germain's*, after his abdication of the throne of *England*, could be deemed *pirates*, the grantor\* still having, as it was contended, the right of war in him; IT IS ENACTED by 11 and 12 Will. 3. c. 7. s. 8. "That if any of his majesty's natural-born subjects, or denizens of this kingdom, shall commit any piracy or robbery, or any act of hostility, against others his majesty's subjects upon the sea, under colour of any commission from any foreign prince or state, or pretence of authority from any person whatsoever, such offender or offenders, and every of them, shall be deemed, adjudged, and taken to be pirates, felons, and robbers; and they and every of them, being duly convicted thereof, according to this act, or the aforesaid statute of king *Henry the Eighth*, shall have and suffer such pains of death, loss of lands, goods, and chattels, as pirates, felons, and robbers upon the seas ought to have and suffer."

Subjects or denizens, committing hostilities at sea, &c. against his majesty's subjects, or giving aid, &c. to enemies at sea, may be tried as pirates.  
11 W. 3. c. 7.

† *Sect. 7.* But doubts having arisen whether such offender, by adherence to the king's enemies, were not guilty of *high treason*, it is enacted by 18 Geo. 2. c. 30. "That all persons being natural-born subjects or denizens of his majesty, who during the present or any future wars have committed, or shall commit any hostilities upon the sea, or in any haven, river, creek, or place, where the admiral or admirals have power, authority, or jurisdiction, against his majesty's subjects, by virtue or under colour of any commission from any of his majesty's enemies, or have been or shall be any other ways adherent, or giving aid or comfort to his majesty's enemies upon the sea, or in any haven, river, creek, or place, where the admiral or admirals have power, authority, or jurisdiction, may be tried as pirates, felons, and robbers, in the said court of admiralty, on ship-board, or upon the land, in the same manner as persons guilty of piracy, felony, and robbery, are by the said act directed to be tried; and such persons being upon such trial convicted thereof, shall suffer such pains of death, loss of lands, goods and chattels, as any other pirates, felons, and robbers ought, by virtue of the said recited act of the eleventh year of king *William the Third*, or any other act, to suffer."

Commander or mariner who shall betray his trust, or turn pirate, &c.

† *Sect. 8.* By 11 and 12 Will. 3. c. 7. s. 9. it is further enacted, "That if any commander or master of any ship, or any seaman or mariner, shall in any place where the admiral hath jurisdiction, betray his trust, and turn pirate, enemy, or rebel, and piratically and feloniously run away with his or their ship or ships; or any barge, boat, ordnance, ammunition, goods, or merchandizes, or yield them up voluntarily to any pirate, or  
"shall

"shall bring any seducing messages from any pirate, enemy, or rebel, or consult, combine, or confederate with, or attempt or endeavour to corrupt any commander, master, officer, or mariner to yield up or run away with any ship, goods, or merchandizes, or turn pirate, or go over to pirates, or if any person shall lay violent hands on his commander, whereby to hinder him from fighting (1) in defence of his ship and goods committed to his trust, or that shall confine his master, or make, or endeavour to make a revolt in the ship, shall be adjudged, deemed, and taken to be a pirate, felon, and robber, and being convicted thereof, according to the directions of this act, shall have and suffer pains of death, loss of lands, goods, and chattels, as pirates, felons, and robbers upon the seas ought to have and suffer."

or person laying violent hands on his commander, &c. shall be adjudged a pirate, and suffer death.

† Sect. 9. By 11 and 12 Will. 3. c. 7. s. 10. it is enacted, "That all and every person and persons whatsoever who, after the twenty-ninth day of *September* in the year of Our Lord one thousand seven hundred, shall either on the land, or upon the seas, knowingly or wittingly set forth any pirate, or aid and assist, or maintain, procure, command, counsel or advise any person or persons whatsoever, to do or commit any piracies or robberies upon the seas, and such person and persons shall thereupon do or commit any such piracy or robbery, then all and every such person or persons whatsoever, so as aforesaid setting forth any pirate, or aiding, assisting, maintaining, procuring, commanding, counselling or advising the same, either on the land or upon the sea, shall be and are hereby declared, and shall be deemed and adjudged to be accessory to such piracy and robbery done and committed: and further, that after any piracy or robbery is or shall be committed by any pirate or robber whatsoever, every person and persons, who knowing that such pirate or robber has done or committed such piracy and robbery, shall on the land, or upon the sea, receive, entertain or conceal any such pirate or robber, or receive or take into his custody any ship, vessel, goods or chattels which have been by any such pirate or robber piratically and feloniously taken, shall be and are hereby likewise declared, deemed and adjudged to be *accessary* to such piracy and robbery." But by 8 Geo. 1. c. 24. s. 3. they shall be deemed and taken to be principal pirates, felons and robbers.

Persons setting forth, or aiding or assisting any pirate, &c. shall be adjudged accessaries:

The like for concealing pirate, &c.

† Sect. 10. By 8 Geo. 1. c. 24. it is enacted, "That in case any person or persons belonging to any ship or vessel whatsoever, upon meeting any merchant ship or vessel on the high seas, or in any port, haven, or creek whatsoever, shall forcibly board or enter into such ship or vessel, and, though they do not seize and carry off such ship or vessel, shall throw overboard or destroy any part of the goods or merchandizes belonging to such ship or vessel, the person or persons who shall be guilty thereof shall in all respects be deemed and punished as *pirates*."

In the exposition of the statute of Hen. 8. it hath been holden,

Sect.



Summary, 77.  
3 In. 112.

**Sect. 11. FIRST,** That the statute 28 Hen. 8. c. 15. does not alter the nature of the offence so as to make that which was before a felony only by the civil law, now become a felony by the common law; for the offence must still be alleged as done upon the sea, and is no way cognizable by the common law but only by virtue of this statute, which, by ordaining that in some respects it shall have the like trial and punishment as are used for felony at common law, shall not be carried so far as to make it also agree with it in other particulars which are not mentioned.

Moor, 756.  
3 Inst. 112.  
Co. Lit. 391.

**Sect. 12. SECONDLY,** That this offence remains as before of a special nature, and that it shall not be included in a general pardon of all felonies, which, as it was, before this statute, to be expounded of no felonies which are such only by the civil law, shall continue still to have the same construction.

3 Inst. 112.  
Sum. 77. 215.

**Sect. 13. THIRDLY,** That no persons shall, in respect of this statute, be construed to be, or punished as, accessaries to piracies before or after, as they might have been if it had been made felony by the statute, whereby all those would incidentally have been made accessaries in the like cases in which they would have been accessaries to a felony at common law.

3 Inst. 112.  
S. P. C. 114.

1 Roll, 175.

**Sect. 14. FOURTHLY,** That the indictment for this offence must allege the fact to be done upon the sea, and must have both the words *felonice* and *piratice*: And that no offence is punishable by virtue of this act as piracy, which would not have been felony if done on the land, and consequently that the taking of an enemy's ship by an enemy is not within the statute.

Moor, 756.  
1 Roll, 175.  
Summary, 77.  
3 Inst. 113.

**Sect. 15. FIFTHLY,** It is agreed, that this statute extends not to offences done in creeks or ports within the body of a county, because they are, and always were, cognizable by the common law.

Case of G.  
Coombes, Ad-  
miralty Sess.  
O. B. June  
1785, Case<sup>s</sup>  
C. L. 300. See  
Rex v. Alsop,  
1 Show. 339.

† **Sect. 16. SIXTHLY,** But it hath been decided, that if *A.* standing on the shore of a harbour, fire a loaded musket at a revenue cutter which had struck upon a sand bank in the sea, about one hundred yards from the shore, by which firing a person is maliciously killed on board the boat, it is *piracy*; for the offence is committed where the death happens, and not at the place from whence the cause of the death proceeds.

As to THE SECOND POINT, *viz.* Before what court the offence of piracy shall be tried.

Trial of offences  
committed upon  
the sea, or with-  
in the admiral's  
jurisdiction, by  
the king's com-  
mission. Alter-  
ed by 11 & 12  
W. 3. c. 7.  
3 Inst. 147.  
Hob. 146.  
Dyer, 211.  
pl. 33.

**Sect. 17.** It is agreed, that *piracy* was formerly only cognizable by the *civil law*, in the courts of THE ADMIRAL; but it being inconsistent with the liberties of the nation that any man's life should be taken away unless by the judgment of his peers or the common law of this land, it is enacted by 28 Hen. 8. c. 15. s. 1. "That all treasons, felonies, robberies, murders and confederacies hereafter to be committed in or upon the sea, or in any other haven, river, creek or place where the admiral or admirals have or pretend to have power, authority or jurisdiction, shall be inquired, tried, heard, determined and judged, in such shires and places in the realm, as shall be limited by the king's com-  
mission

"mission or commissions to be directed for the same, in like form and condition as if any such offence or offences had been committed or done in or upon the land; and such commissions shall be had under the king's great seal, directed to the admiral or admirals, or to his or their lieutenant, deputy and deputies, and to three or four such other substantial persons as shall be named or appointed by the lord chancellor of *England* for the time being, from time to time, and as oft as need shall require, to hear and determine such offences after the common course of the laws of this realm, used for treasons, felonies, murders, robberies and confederacies of the same, done and committed upon the land within this realm."

Sect. 18. By 28 Hen. 8. c. 15. s. 2. it is further enacted, "That such persons to whom such commission or commissions shall be directed, or four of them at the least, shall have full power and authority to inquire of such offences, and of every of them, by the oaths of twelve good and lawful inhabitants in the shire limited in their commission, in such like manner and form as if such offences had been committed upon the land within the same shire; and that every indictment, found and presented before such commissioners, of any treasons, felonies, robberies, murders, manslaughter, or such other offences, being committed or done in or upon the seas, or in or upon any other haven, river or creek, shall be good and effectual in the law; and if any person or persons happen to be indicted for any such offence done or hereafter to be done upon the seas, or in any other place above limited, that then such order, process, judgment and execution shall be used, had, done and made, to and against every such person and persons so being indicted, as against traitors, felons and murderers, for treason, felony, robbery, murder, or other such offences done upon the land, as by the laws of this realm is accustomed; and that the trial of such offence or offences, if it be denied by the offender or offenders, shall be had by twelve lawful men inhabitants in the shire limited within such commission, which shall be directed as is aforesaid, and no challenge or challenges to be had for the hundred."

The commissioners' authority.  
1 Leon. 106.  
270.  
3 Bulst. 28, 29.

† Sect. 19. By 28 Hen. 8. c. 15. s. 5. Provided alway, "That whensoever any such commission for the punishment of the offences aforesaid, or of any of them, shall be directed or sent to any place within the jurisdiction of the five ports, that then every such commission shall be directed unto the lord Warden of the said ports for the time being, or to his deputy, and unto three or four such other person or persons as the lord chancellor for the time being shall name and appoint; any thing in this present act to the contrary notwithstanding."

Commissions directed into any place within the Cinque Ports.

Sect. 20. By 28 Hen. 8. c. 15. s. 6. Provided alway, "That whensoever any commission shall be directed unto the five ports for the inquisition and trials of any of the offences expressed in this act, that every such inquisition and trial to be had by virtue of such commission, shall be made and had by the inhabitants in the said five ports, or the members of the same;

27 H. 8. c. 4.  
1 Geo. 1. stat.  
2. c. 25.  
4 Geo. 1. c. 11.  
8 Geo. 1. c. 24.  
28. And see  
18 Geo. 2. c. 30.  
for the more ef-

fectual suppression of piracy. "same; any thing in this act to the contrary thereof notwithstanding." "standing."

How and where  
piracies, felonies,  
&c. committed on the  
sea may be  
tried.

*Sect. 21.* And it being doubted whether the 28 Hen. 8. c. 15. had not taken away the trial of piracy before the admiral, his lieutenant or commissary, which occasioned a total disuse of such manner of trial, to the encouragement of pirates who could not be tried by this statute until brought to *England*, at a great trouble and expense, it was enacted by 11 and 12 Will. 3. c. 7. "That all piracies, felonies, and robberies committed in or upon the sea, or in any haven, river, creek, or place, where the admiral or admirals have power, authority, or jurisdiction, should be tried by commissioners to be appointed according to the directions of that act, in any foreign colony, but they were to proceed according to the course of the civil law, as was the practice in the admiral's court, but now by stat. 46 Geo. 3. c. 54. it is enacted, "That all treasons, piracies, &c. and other offences of what nature or kind soever committed upon the sea, or in any haven, river, &c. where the admiral or admirals, &c. have jurisdiction, may be enquired of, tried, heard, determined, and adjudged, according to the common course of the laws of this realm used for offences committed upon the land within this realm, and not otherwise, in any of his majesty's islands, plantations, colonies, &c. under and by virtue of the king's commission, under the great seal to be directed to any four or more discreet persons as the lord chancellor, keeper, &c. for the time being shall from time to time think fit to appoint, and that the said commissioners or any three of them shall have such and the like powers and authorities for the trial of such murders, piracies, &c. within any such island, as any commissioners appointed according to the statute 28 Hen. 8. by any laws now in force would have for the trial of the said offences within this realm; and that all persons convicted of any of the said offences, by virtue of any such commission, shall be subject and liable and shall suffer the same pains and penalties, &c. as by any law or laws now in force, the persons convicted would be subject to, in case the same were determined within this realm, by virtue of any commission, according to the directions of the statute 28 Hen. 8."

And by 43 Geo. 3. c. 113. s. 5. which recites, "it is convenient that accessaries on the high seas should be tried according to the provisions of the st. 28 Hen. 8." enacts, "That in all cases in which any person, &c. shall hereafter procure, direct, counsel, &c. any other person in committing any felony whatsoever, or shall become an accessary before the fact to any felony whatsoever, whether such principal felony be committed within the body of any county within the realm, or upon the high seas, or whether such procuring, &c. or otherwise becoming accessary, before the fact, shall have been committed within the body of any county within this realm, or upon the high seas, then, in all such cases, the offence of procuring, &c. or becoming accessary before the fact, shall be tried, &c. in case the principal felony was committed within the realm, by the course of the common law, either within such county where "the

"the principal felony shall have been committed, or within the county wherein the offence of procuring, &c. or otherwise becoming accessory before the fact shall have been committed or done; and in case the principal felony shall have been committed upon the high seas, then the offence of procuring, &c. or becoming accessory before the fact, shall and may be enquired of in and by such court, and in such manner and form, as in and by the st. 28 Hen. 8. is appointed and directed."

Persons once tried are not again to be tried by any court or jurisdiction whatsoever.

This statute extends only to accessaries *before* the fact. In the case of one Scandling, who had abetted one Exon, who was committed for piracy, to break out of prison, the court held that as it was an accessorial act to the piracy, which was not cognizable at common law, neither was the accessorial act cognizable at common law. And it was not long after fully settled, that one who knowingly receives and abets a pirate in the body of a county, was not triable by the common law, the original offence being cognizable only by another jurisdiction (Yelverton, 134. 13 Co 53.)—but see st. 10 and 11 W. 3. c. 7. s. 10. and 8 Geo. 1. c. 24. s. 3. whereby accessaries are declared principals, and to be tried as *such*.

† Sect. 32. By 11 and 12 Will. 3. c. 7. s. 16. "Provided always, that whosoever any commission for the trial and punishment of the offences aforesaid, or any of them, shall be directed or sent to any place within the jurisdiction of the Cinque Ports, that then every such commission shall be directed unto the lord warden of the Cinque Ports for the time being, or to his lieutenant, and unto such other persons as the lord high chancellor or keeper of the great seal of *England* for the time being, or commissioners for the custody of the great seal, shall name and appoint; and likewise that every inquisition and trial, to be had by virtue of such commission so directed and sent to any place in the said Cinque Ports, shall be made and had by the inhabitants of the said Cinque Ports, or the members of the same; any thing in this act to the contrary thereof notwithstanding."

How commissions for trying of offences within the jurisdiction of the Cinque Ports shall be directed, and inquisition made.

† Sect. 33. And by 4 Geo. 1. c. 11. s. 7. "All and every person and persons who have committed or shall commit any offence or offences, for which they ought to be adjudged, deemed and taken to be pirates, felons, or robbers, by an act made in the parliament holden in the eleventh and twelfth years of the reign of his late majesty king *William* the Third, intituled *An act for the more effectual suppression of piracy*, may be tried and judged for every such offence in such manner and form as in and by an act made in the twenty-eighth year of the reign of king *Henry the eighth* is directed and appointed for the trial of pirates, and shall and ought to be utterly debarred and excluded from the benefit of clergy for the said offences; any law or statute to the contrary thereof in any wise notwithstanding."

Offenders against 11 & 12 W. 3. c. 7. may be tried as by 28 Hen. 8. c. 15.

† Sect. 33. By 18 Geo. 2. c. 30. s. 2. it is enacted, "That any person

See farther, 6 Geo. 1. c. 19. and 8 Geo. 1. c. 24.

Not to be tried again for the

same crime as  
high treason.

"person who shall be tried and acquitted, or convicted, according to this act, for any of the said crimes, shall not be liable to be indicted, prosecuted, or tried again in *Great Britain*, or elsewhere, for the same crime or fact as high treason."

Criminals not  
tried by this act  
may be tried for  
high treason, by  
28 H. 8. c. 15.

† Sect. 34. By 18 Geo. 2. c. 30. s. 3. it is provided, "That nothing in this act contained shall be construed to extend to prevent any persons guilty of any of the said crimes, who shall not be tried according to this act, from being tried for high treason within this realm, according to the aforesaid act of the twenty-eighth year of king *Henry the eighth*."

A session of the  
court of admiralty  
to be held  
in *March* and  
*October* yearly.

† Sect. 35. And for the more speedily bringing offenders to justice, and to prevent the inconveniences occasioned by want of frequently holding a session of admiralty, it is enacted by 32 Geo. 2. c. 25. s. 20. "That from and after the first day of *June* one thousand seven hundred and fifty-nine, a session of oyer and terminer and gaol-delivery, for the trial of offences committed upon the high seas within the jurisdiction of the admiralty of *England*, shall be held twice at the least in every year; that is to say, in the several months of *March*, and *October*, in each year, at *Justice Hall* in the *Old Bailey, London*; except at such times as the sessions of oyer and terminer and gaol-delivery for the city of *London* and county of *Middlesex* shall be appointed to be there held; or in such other places, within that part of *Great Britain* called *England*, as the lord high admiral of *Great Britain*, or the commissioners for executing the office of lord high admiral of *Great Britain* for the time being, or any three or more of them, shall by any letter or order in writing under their hands directed to the judge of the high court of admiralty in *England* for the time being, appoint."

Commissioners  
of the court, and  
justices of the  
peace, empowered  
to take informations  
of piracy, &c.

† Sect. 36. And by 32 Geo. 2. c. 25. s. 21. it is further enacted, "That from and after the first day of *June* one thousand seven hundred and fifty-nine, it shall and may be lawful, not only to and for any one or more of the commissioners for the time being, named in the commission of oyer and terminer for the trying of offences committed within the jurisdiction of the admiralty of *England*, but also to and for any one or more of the justices of the peace for the time being, of any county, riding, division, or place, within that part of *Great Britain* called *England*, and they are hereby respectively authorised and empowered, from time to time, to take any information or informations of any witness or witnesses in writing upon oath, touching any piracy, felony, or robbery, done or committed, or charged to have been done or committed, in or upon the sea, or in any haven, river, creek, or place, where the admiral or admirals hath or have power, authority, or jurisdiction; and thereupon (if such commissioner or commissioners, or justice or justices of the peace respectively shall see cause) by any warrant or warrants under his or their hand and seal, or hands and seals, to cause the person or persons accused in such information or informations to be apprehended and committed to the gaol of the county or place wherein the same information

"or

"or informations shall be taken, there to remain until discharged by due course of law."

† Sect. 37. And by 32 Geo. 2. c. 25. s. 22. it is further enacted, "That such of the said commissioners, or justices of the peace, who shall cause any such person or persons to be committed as is last mentioned, shall, and he or they is or are hereby respectively required at the same time to oblige all and every such other person or persons whom such commissioner or commissioners, or justice or justices of the peace shall judge necessary to prosecute and give evidence against the person or persons who shall be so committed as aforesaid, to enter into one or more recognizance or recognizances to his majesty, in a sufficient penalty, for his, her, or their appearing at the then next session of *oyer and terminer*, and gaol-delivery, to be held for the jurisdiction of the admiralty of *England*, there to prosecute and give evidence against the person or persons who shall be committed as aforesaid: And if any person shall refuse to enter into such recognizance to prosecute or give evidence as shall be required, he, she, or they so refusing, shall be committed by any such commissioner or commissioners, justice or justices, to the gaol of the county or place in which the person so refusing shall be, until the next sessions of admiralty shall be held, or such persons shall enter into such recognizance as shall be required as aforesaid; which recognizance or recognizances, together with the information or informations taken touching the offence or offences wherewith the person or persons to be committed as aforesaid shall be charged, the said commissioner or commissioners, or justice or justices of the peace, before whom the same shall be taken, shall and they are hereby respectively required to transmit with all convenient speed to the register for the time being of the high court of admiralty of *England*, to be by him forthwith laid before the judge for the time being of the same court, and afterwards to be kept among the records of that court."

† Sect. 38. And by 32 Geo. 2. c. 25. s. 23. it is further enacted, "That the marshal of the admiralty for the time being, and his deputy or deputies, and all sheriffs, bailiffs, stewards, constables, headboroughs, tythingmen, keepers of gaols and prisons, and all other officers whatsoever, for keeping of the peace (as well within liberties as without), shall, and they, and every of them, are hereby respectively authorized and required, from time to time, diligently to execute, perform, and obey all such precept and precepts, warrant and warrants, and other order and orders, as shall at any time or times hereafter be made, directed, issued, or given to them or any of them respectively, by any one or more of the said commissioners named in the commission of *oyer and terminer*, or justices of the peace, by virtue or in pursuance of this act, touching any of the matters or things herein contained."

The marshal, sheriffs, and other peace-officers, are to obey and execute all precepts and orders of the commissioners and justices.

† Sect. 39. It hath been determined, that two justices may take a recognizance for the appearance of one charged with felony on the high seas at the sessions of admiralty, and the recognizance may be estreated into the exchequer.

*Rex v. Mullen, Hilary, 6 Geo. 3. Parker, 241.*

As to THE THIRD POINT, viz. In what manner piracy is punished.

The punishment of offenders. 1 Salk. 85. Co. Lit. 391. a. † Sect. 40. By 28 Hen. 8. c. 15. s. 2. it is enacted, "That such as shall be convict of any such offence or offences, by verdict, confession, or process, by authority of any such commission, shall have and suffer such pains of death, losses of lands, goods and chattels, as if they had been attainted and convicted of any treasons, felonies, robberies, or other the said offences done upon the lands."

Moor, 756. pl. 1044. † Sect. 41. By 28 Hen. 8. c. 15. s. 3. it is recited, "That for treasons, robberies, felonies, murders and confederacies done upon the sea or seas, or in any place above rehearsed, the offenders shall not be admitted to have the benefit of his or their clergy, but be utterly excluded thereof and from the same, and also of the privilege of any sanctuary."

Offenders convicted on this act, excluded the benefit of clergy. † Sect. 42. By 8 Geo. 1. c. 24. s. 4. it is further enacted, "That all and every offender or offenders convicted of any piracy, felony, or robbery, by virtue of this act, shall not be admitted to have the benefit of clergy, but be utterly excluded of and from the same."

3 Inst. 112. Co. Lit. 391. B. 2. c. 23. s. 12. † Sect. 43. An attainder for this offence corrupts not the blood, inasmuch as the statute only says that the offender shall suffer such pains of death, &c. as if he were attainted of a felony at common law; but says not that the blood shall be corrupted, &c. (2)

3 Inst. 114. Dyer, 241. 308. Sect. 44. Yet it has been resolved, that an offender standing mute on an arraignment by force of this statute, shall have judgment of *peine forte et dure*; for the words of the statute of 28 Hen. 8. c. 15. are, that a commission shall be directed to hear and determine such offences after the course of the common law of the land, &c.—† But by 12 Geo. 3. c. 3. "standing mute in piracy amounts to a conviction, and the court shall award the same judgment as on a conviction by verdict or confession."

As to THE FOURTH PARTICULAR, viz. Of the means which may be used to prevent piracy.

Encouragement for commanders and mariners to defend their ships against pirates, &c. † Sect. 45. By 11 and 12 Will. 3. c. 7. s. 11. it is recited, "That it will conduce to the suppressing of robberies on the sea, if due encouragement be given, and rewards allowed to such commanders, masters, and other officers, seamen and mariners, as shall either bravely defend their own ships, or take, seize, and destroy pirates, sea rovers, and enemies;" and enacted, "That when any *English* ship shall have been defended against any pirates, enemies or sea rovers, by fight, and brought to her designed port, in which fight any of the officers or seamen shall

(2) Lord Hale thinks that an indictment for piracy before commissioners under st. H. 8. may be framed on an indictment at common law, namely, *vi et armis et felonice*, for that piracy upon the statute is robbery; and that offenders have

been indicted, convicted, and executed for it in the King's Bench as for a robbery. But, however this might have been formerly, there appears no instance of any such proceeding for several centuries. (2 East, 805.)

"shall have been killed, or wounded, it shall and may be lawful to and for the judge of his majesty's high court of admiralty, or his surrogate in the port of *London*, or the mayor, bailiff, or chief officer in the several out-ports of this kingdom, upon the petition of the master or seamen of such ship, so defended as aforesaid, to call unto him four or more good and substantial merchants, and such as are no adventurers or owners of the ship or goods so defended, and have no manner of interest therein, and by advice with them to raise and levy upon the respective adventurers and owners of the ship and goods so defended, by process out of the said court, such sum or sums of money as himself and the said merchants, by plurality of voices, shall determine and judge reasonable, not exceeding two pounds *per centum* of the freight, and of the ship and goods so defended, according to the first costs of the goods; which sum or sums of money so raised shall be distributed among the captain, master, officers, and seamen of the said ship, or widows and children of the slain, according to the direction of the judge of the said court, or his surrogate in the port of *London*, or the mayor, bailiff, or chief officer in the several out-ports of this kingdom, with the approbation of the merchants aforesaid, who shall proportion the same, according to their best judgment, unto the ship's company as aforesaid, having special regard unto the widows and children of such as shall have been slain in that service, and such as have been wounded or maimed."

† *Sect. 46.* By 11 and 12 Will. 3. c. 7. s. 12. And for the better and more effectual prevention of combinations and confederacies for the running away with or destroying of any ship, goods or merchandizes, it is further enacted, "That a reward of ten pounds for every ship or vessel, of one hundred tons or under, and fifteen pounds for every ship or vessel of a greater burthen, shall be paid by the captain, commander, or master of every ship or vessel, wherein any such combination or confederacy shall be set on foot for the running away with or destroying any such ship, or the goods and merchandizes therein laden, to such person as shall first make a discovery thereof, upon due proof of such combination or confederacy; the same to be paid at the port where the wages of the seamen of the said ship are or ought to be paid, after such discovery and proof made."

Reward to discoverer of any combination for running away with ship, &c.

† *Sect. 47.* By 11 and 12 Will. 3. c. 7. s. 17. "And for the prevention of seamen deserting of merchant ships abroad in parts beyond the seas, which is the chief occasion of their turning pirates, and of great detriment to trade and navigation in general;" it is enacted, "That all such seamen, officers or sailors, who shall desert the ships or vessels wherein they are hired to serve for that voyage, shall for such offence forfeit all such wages as shall be then due to him or them."

Seamen deserting merchant ships to lose wages.

† *Sect. 48.* By 8 Geo. 1. c. 24. s. 2. it is enacted, "That every ship or vessel which shall be fitted out with a design to trade with, or supply, or correspond with any pirate, and all and every goods and merchandizes put on board the same for

Ships and the goods forfeited, half to the crown, half to the discoverers.

"any



“ any intent or purpose to trade with any pirate, felon or robber  
 “ on the seas, shall be *ipso facto* forfeited; one moiety thereof to  
 “ the use of the king’s majesty, his heirs and successors, the  
 “ other moiety to the person or persons who shall first make  
 “ discovery, and give information of such intent or design; and  
 “ such person or persons, who shall first make such discovery,  
 “ shall and may sue for and recover the said ship or vessel, and  
 “ all and every the goods and merchandizes on board the same,  
 “ in the high court of admiralty.”

Seamen maimed  
 in fight against  
 pirates, shall re-  
 ceive the re-  
 wards in 22 and  
 23 Car. 2. c. 11.  
 and be admitted  
 into Greenwich  
 Hospital.

† Sect. 49. By 8 Geo. 1. c. 24. s. 5. “ To the end that a  
 further encouragement may be given to all seamen and mariners  
 to fight and defend their ships from pirates, it is enacted, “ That  
 “ in case any seaman or mariner on board any merchant ship or  
 “ vessel, or any other ship or vessel, shall be maimed in fight  
 “ against any pirate, every such seaman and mariner, upon due  
 “ proof of his being maimed in such fight, shall not only have  
 “ and receive the rewards already appointed by a statute made  
 “ in the twenty-second and twenty-third years of the reign of  
 “ king *Charles the Second*, intituled, *An act to prevent the deliver-*  
 “ *ing up of merchant ships, and for the increase of good and*  
 “ *serviceable seamen*, but shall also be admitted into and provided  
 “ for in *Greenwich Hospital*, preferable to any other seaman or  
 “ mariner who is disabled from service, or getting a livelihood,  
 “ merely by his age.”

Masters or sea-  
 men not defend-  
 ing themselves  
 against pirates,  
 &c. forfeit their  
 wages and suf-  
 fer six months  
 imprisonment.

† Sect. 50. By 8 Geo. 1. c. 24. s. 6. it is further enacted,  
 “ That in case any commander, master, or other officer, or any  
 “ seaman or mariner of any merchant ship or vessel which carries  
 “ guns and arms, shall not, when they are attacked by any pirate,  
 “ or by any ship or vessel on which any such pirate is on board,  
 “ fight and endeavour to defend themselves, and their said ship  
 “ or vessel, from being taken by the said pirate, or shall utter  
 “ any words to discourage the other mariners from defending the  
 “ ship, and by reason thereof the said ship or vessel shall fall  
 “ into the hands of such pirate; then, and in every such case,  
 “ every such commander or master, or other officer, and every  
 “ seaman or mariner, who shall not fight and endeavour to defend  
 “ and save the said ship or vessel, or who shall utter any such  
 “ words as aforesaid, shall lose and forfeit all and every part of  
 “ the wages due to him and them respectively, to the owner and  
 “ owners of the said ship or vessel, and shall not be permitted to  
 “ sue for or recover the same, or any part thereof, in any court  
 “ either of law or equity, and as a farther punishment shall suffer  
 “ six months imprisonment.”

Masters shall  
 not advance to  
 any seaman  
 above half his  
 wages while be-  
 yond sea.

† Sect. 51. By 8 Geo. 1. c. 24. s. 7. “ And for prevention of  
 seamen or mariners deserting (3) merchant ships or vessels  
 abroad in the plantations, or in any other parts beyond the seas,  
 which is the chief occasion of their turning pirates, and of great  
 detriment to trade and navigation, and is chiefly occasioned by  
 the owner or owners of ships or vessels paying wages to the  
 seamen or mariners when abroad:” it is enacted, “ That no  
 “ master or owner of any merchant ship or vessel shall pay or  
 “ advance,

advance, or cause to be paid or advanced to any seaman or mariner, during the time he shall be in parts beyond the seas, any money or effects upon account of wages exceeding one moiety of the wages which shall be due at the time of such payment, until such ship or vessel shall return to *Great Britain* or *Ireland*, or the plantations, or to some other of his majesty's dominions whereto they belong, and from whence they were first fitted out; and if any such master or owner of such merchant ship or vessel shall pay or advance, or cause to be paid or advanced, any wages to any seaman or mariner above the said moiety, such master or owner shall forfeit and pay double the money he shall so pay or advance, to be recovered in the high court of admiralty, by any person who shall first discover and inform of the same."

## CHAP. XXI.

## OF FORGERY.

OF Forgery there are two kinds; First, by common law. Secondly, by the statute. Se- Britt. 16.  
Fleta, 2. c. 22.

*Sect. 1.* FORGERY by the common law seemeth to be an offence in falsely and fraudulently making or altering any matter of record; or any other authentic matter of a public nature; as a parish register, or any deed or will; punishable by fine and imprisonment, and such other corporal punishment as the court in discretion shall think proper. (1)

For the better understanding whereof I shall endeavour to shew,

1. In what cases the making or altering of a writing shall be said to be so far false and fraudulent, as to amount to forgery.

2. That a man may be guilty of forgery in respect of all the abovementioned writings, and no other.

*Sect. 2.* As to the first particular, it is said to be possible for a man knowingly to make a deed in his own name, and also to sign and seal it himself, which yet, in judgment of law, may be no better than a downright forgery; as if a man make a feoffment of certain lands to *J. S.* and afterwards make a deed of feoffment

(1) This definition of forgery is wholly inapplicable to the crime as now constituted by a variety of statutes, and indeed it seems hardly to have been a correct definition at common law; for, although Hawkins says that a man cannot be guilty of forgery in other writings than those specified, viz. "any matter of record, or any authentic matter of a public nature," yet in a subsequent case, in which the whole of that matter was fully discussed by the court, (*R. v. J. Ward*, 2 Lord Raymond, 1461.) they held that at common law it was forgery to make false private writings, as a bill of sale, bill of lading, an acquit-

tance, a warrant of attorney, a bill of exchange. And they made this distinction between forgery at common law, and cheats by means of false tokens, under the stat. 33 Hen. 8. c. 1. that by the statute it was necessary the party should receive an actual prejudice; which was not necessary in forgery; in the latter case, it was sufficient if the party might be prejudiced by it.—See also *E. P. C.* vol. 2. 862. Forgery, in its now enlarged sense, is defined to be the "fraudulent making or alteration of a writing to the prejudice of another man's right."

3 Inst. 169.  
Pulton, 46.  
27 H. 6. 3.  
Moor, 655.  
759.  
Noy, 101.  
3 Inst. 170.  
Con. Dyer, 288.

3 Inst. 171.

3 Modern, 66.  
8 Modern, 192.  
Fitzgib. 261.  
12 Mod. 493.  
496.  
Strange, 69.  
3 Inst. 169.  
Moor, 619.

3 Inst. 169.

Vide Moor,  
619.  
3 Modern, 66.

Vide 2 R. Ab.  
28, 29.  
11 Coke, 27.

Foster, 116.

Pulton, 46.  
21 H. 6. 4.

Noy, 99.  
Moor, 655.  
Salk. 375.

feoffment of the same lands to *J. D.* of a date prior to that of the feoffment to *J. S.* in which case he is said to be guilty of forgery, because he knowingly falsifies the date, in order to defraud his own feoffee, by making a second conveyance which at the time he had no power to make. Also it is said, that his crime would have been no less, if by his conveyance he had passed only an equitable interest for good consideration, and had afterwards by such a subsequent antedated conveyance endeavoured to avoid it. Also in many other cases a writing may be said to be forged where neither the hand nor seal of any one are forged; as where one being directed to draw up a will for a sick person, doth insert some legacies therein of his own head; or where one finding another's name at the bottom of a letter at a considerable distance from the other writing, causes the letter to be cut off, and a general release to be written above the name, and then takes off the seal, and fixes it under the release; or where one inserts into an indictment the names of those against whom in truth it was not found; or where one makes any fraudulent alteration of the form of a true deed in a material part of it; as by making a lease of the manor of *Dale* appear to be a lease of the manor of *Sale*, by changing the letter *D.* into an *S.* or by making a bond for five hundred pounds, expressed in figures, seem to have been made for five thousand, by adding a new cypher. But *Sir Edward Coke* seems to say, that a deed so altered may more properly be called a *false* than a *forged* writing, because it is not forged in the name of another, nor his seal nor hand counterfeited. But I see no good reason why such an alteration of a deed should not as properly be called forgery, as the entire making of a new deed in another's name; for in both cases not only the fraud and villainy are the very same, but also a man's hand and seal are falsely made use of to testify his assent to an instrument, which after such an alteration is no more his deed than a stranger's. Also the notion of forgery doth not seem so much to consist in the counterfeiting a man's hand and seal, which may often be done innocently, but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another, which he is no way privy to, or at least to make a man's own act appear to have been done at a time when it was not done, and by force of such a falsity to give it an operation, which in truth and justice it ought not to have, as appears by the foregoing cases in this section, to most of which *Sir Edward Coke* himself seems to agree.

*Sect. 3.* But it seemeth to be clear, that he who writes a deed in another's name, and seals it in his presence, and by his command, is not guilty of forgery, because the law looks on this as the other's own sealing.

*Sect. 4.* Also it hath been adjudged, that he shall not be punished for forgery who raseth out the word *libris* out of a bond made to himself, and putteth in *marcis*, because here is no appearance of a fraudulent design to cheat another, and the alteration is prejudicial to none but to him who makes it, whose security for his money is wholly avoided by it; yet it is said, that it

it would be forgery, if by the circumstances of the case it should any way appear to have been done with an eye of gaining an advantage to the party himself, or of prejudicing a third person. Also it is holden, that such an alteration, even without these circumstances, is a misdemeanor, though it be no forgery.

*Sect. 5.* It hath been resolved, that a man shall not be adjudged guilty of forgery for writing a will for another without any directions from him, who becomes *non compos* before it is brought to him; for it is not the bare writing an instrument in another's name without his privity, but the giving it a false appearance of having been executed by him, which makes a man guilty of forgery. Moor, 760.

*Sect. 6.* It is said, that regularly a man cannot commit an act of forgery by a bare nonfeasance, as by omitting a legacy out of a will, which he is directed to draw for another. Yet it hath been holden by some, even in this very case, that if the omission of a bequest to one cause a material alteration in the limitation of a bequest to another, as where the omission of a devise of an estate for life to one man causeth a devise of the same lands to another to pass a present estate, which otherwise would have passed a remainder only, he who makes such an omission is guilty of forgery. In this case the first enquiry should be, with what intention the omission was made. Moor, 760. Noy, 101.

*Sect. 7.* It seemeth to be no way material, whether a forged instrument be made in such a manner, that if it were in truth such as it is counterfeited for, it would be of validity, or not; and upon this ground it hath been adjudged, that the forgery of a protection in the name of *A. B.* as being a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. 1 Sid. 142.

AND NOW I am to shew, in the second place, that a man may be guilty of forgery at common law in respect of any of the abovementioned writings, and of no other.

*Sect. 8.* And FIRST it is clear, that one may be guilty thereof by the common law, by counterfeiting a matter of record; for since the law gives the highest credit to all records, it cannot but be of the utmost ill consequence to the public, to have them either forged or falsified. 1 R. Ab. 65. 76. Yelv. 146. C. Eliz. 178. 3 Mod. 66. 8 Mod. 192. 12 Mod. 493. 496. Strange, 69.

*Sect. 9.* SECONDLY, Also there seemeth to be no doubt but that one may be guilty of this crime by the common law, by forging any other authentic matter of a public nature, as a (*a*) privy seal, or a (*b*) licence from the barons of the Exchequer to compound a debt, or a (*c*) certificate of holy orders, or a (*d*) protection from a parliament man. (a) 1 R. Abr. 68. C. Car. 326. 1 Jones, 325. (b) 1 R. Ab. 65. 2 Bula. 137. (c) 1 Lev. 138. (d) 1 Sid. 142.

*Sect. 10.* THIRDLY, It is also unquestionable, that a man may be in like manner guilty of forgery at common law, by forging a (*e*) deed; and surely there cannot be any reason to doubt, but that one may be equally guilty by forging a (*f*) will, which cannot be thought to be of less consequence than a deed. But I do not find this point any where directly holden. (e) 1 R. Ab. 66. Raymond, 81. Owen, 47. 1 Sid. 278. 3 Leon. 170. (f) Moor, 760. Noy, 101. Dyer, 302. If

is now made felony by 2 Geo. 2. c. 25. Vide postea, Private Documents. Sect.

(g) 1 Roll. 431  
 1 Sid. 16. 155.  
 451.  
 1 R. Abr. 66.  
 Winch. 40. 90.  
 3 Leon. 231.  
 1 Leon. 101.  
 C. Eliz. 296.  
 853.  
 3 Buls. 265.  
 (h) C. Eliz. 166.  
 1 Yelv. 146.  
 1 Bulst. 265.  
 (i) F. N. B.  
 96. 99. 100.

**Sect. 11.** As to other writings of an inferior nature, it seems to have been generally laid down as a (g) rule, that the counterfeiting of them is not properly forgery; (h) and some have gone so far as to hold, that the forging another's hand, and thereby receiving rent due to him from his tenants, is not punishable at all; and therefore it cannot but be more safe to proceed against offences of this nature, as cheats than as forgeries; but surely it cannot be proved by any good authority, that such base crimes are wholly disregarded by the common law, as not deserving a public prosecution; for the opinion in the books above cited, that they are punishable by no law, seems by no means to be maintainable, since many of them are most certainly punishable by force of 33 Hen. 8. c. 1. which is set forth at large in the twenty-third chapter. Neither can it be a convincing argument, that they are not punishable at common law, (i) because they are of a private nature, since deeds concerning private matters are also of a private nature, as much as other writings concerning such matters: yet no one will say, that the making a false deed concerning a private matter is not punishable at common law. But perhaps it may be reasonable to make this distinction between the counterfeiting of such writings, the forgery whereof hath been already shewn to be properly punishable as forgery, and the counterfeiting of other writings of an inferior nature, that the former is in itself criminal, whether any third person be actually injured thereby or not, but that the latter is no crime, unless some one receive a prejudice from it. (2)

**Sect. 12.** Thus far of FORGERY by common law.

We are now to consider of forgery by statute, which depends upon a great variety of enactments relating to the following matters.

1. To records.
2. To the public funds and stocks of public companies.
3. To notes and other securities of the bank of England and other public companies.
4. To stamps.
5. To official papers, securities and documents.
6. To private papers, securities and documents.

#### 1. Records.

3 Inst. 71, 72.  
 1 Hale, 646.

† **Sect. 1.** The offence of embezzling, defacing, or altering any record, without due authority, is an offence at common law, highly punishable by fine and imprisonment, &c.

† **Sect. 2.** By 8 Hen. 6. c. 12. it is ordained, "That if any record or parcel of the same, writ, return, panel, process, or warrant of attorney, in the king's courts of chancery, exchequer,

(2) See also the case of Leander Fawcett, for forging an affidavit and order to procure his discharge, he being in custody for a contempt. A

great majority of the judges held this to be a forgery at common law. 2 E. P. C. 864.

“quer, the one bench or the other, or in his treasury, be wil-  
 “lingly stolen, taken away, withdrawn, or avoided, by any clerk,  
 “or by other person, because whereof any judgment shall be  
 “reversed; that such stealer, taker away, withdrawer, or avoider,  
 “their procurators, counsellors, and abettors, thereof indicted,  
 “and by process thereupon made thereof duly convict by their  
 “own confession, or by inquest to be taken of lawful men,  
 “(whereof the one half shall be of the men of any court of the  
 “same courts, and the other half of the other,) shall be judged  
 “for felons, and shall incur the pain of felony: and that the  
 “judges of the said courts, of the one bench or of the other,  
 “have power to hear and determine such defaults before them,  
 “and thereof to make due punishment, as afore is said.”

*Sect. 3.* In the construction of this clause, it hath been holden :

*Sect. 4.* FIRST, That it extends only to the courts which are 3 Inst. 71.  
 expressly named; and to the court of chancery so far only as it 1 Hale, 646 to  
 proceeds according to the course of the common law. 648.

*Sect. 5.* SECONDLY, That it extends not to such offence by the 3 Inst. 72.  
 judges of any court; for whereas it begins with expressly naming  
 clerks, which are inferior to them, it shall not be intended to  
 include them under the general words following.

*Sect. 6.* However, by 8 Ric. 2. c. 4. “Judges as well as 2 R. 3. 10.  
 “clerks are to pay a fine to the king, and make satisfaction to 3 Mod. 66.  
 “the party for falsely entering pleas, or rasing rolls, or changing B. Cor. 174.  
 “verdicts, to the disherison of any one.” B. Tresp. 31.

*Sect. 7.* And judges are highly punishable at common law for Con. B. pre-  
 other offences of like nature, as for inserting a bill of indictment sent. 23. indict.  
 not found by the jury among those which were found, and such 14. 50.  
 like; and *Justice INGRAM*, in the reign of *Edward the First*, 3 Inst. 72.  
 was fined eight hundred marks, for rasing a fine of thirteen shil-  
 lings and four-pence, set on a poor man, and making it six shil-  
 lings and eight-pence.

*Sect. 8.* THIRDLY, That not only such an alteration whereby  
 a judgment is actually reversed, but also such whereby it is  
 reversible, whether it were made before or after the judgment 2 Roll. 81.  
 was given, or whether it be or be not afterwards amended by the  
 court, is within this act; for those words in the statute, “where-  
 “by any judgment shall be reversed,” are taken to have the same  
 purport as if it were said, “whereby any judgment shall be  
 “annulled, or lose its force or effect;” for it is plain, that the  
 statute cannot intend that the judgment must be actually re-  
 versed by writ of error, because it speaks of stealing or carrying  
 away, or avoiding of records, which makes it impossible that the  
 judgment should be reversed at all, because no writ of error can  
 remove a judgment which appears not. And it has been holden, 2 R. 3. 10.  
 that if *A. B.* be outlawed by the name of *A. C.* and afterwards S. P. C. 36.  
 the record be rased, and *A. B.* inserted, the offence is within the 3 Inst. 72.  
 statute, because the record against *A. C.* is annulled, and the 11 Rep. 34.  
 judgment prevented, which might have been given on a writ of  
 error for this defect.

*Sect.*

2 R. 3. 10, 11.  
S. P. C. 36.  
3 Inst. 73.

**Sect. 9. FOURTHLY,** If the offence were committed partly in one county and partly in another, but not so as to amount to a complete offence within the statute in either, that the party cannot be indicted for a felony, because the counties cannot join in an indictment, and that which is done in one cannot be found in another, but that he may be indicted for a misprision in either county.

3 Inst. 72.  
Con. S. P. C. 44.

**Sect. 10. FIFTHLY,** That the act, by making those who are accessory before the fact principal felons, does not mean any way to favour those who are accessory after, but to leave them to the general construction of the law.

3 Inst. 73.

**Sect. 11. SIXTHLY,** That by the last clause of the act, the justices of either bench have a concurrent authority, and that they which shall first enquire shall proceed; and that if the offence were committed in the county where the benches sit, they need no other commission; but if it were done in another county, that they must have a special commission: and if in *London*, that they shall have a commission in which **THE MAYOR** shall be omitted; for the charters of the city, which require that he shall be a principal in every commission, extend not to such causes which are specially limited to particular judges.

3 Inst. 72.  
2 R. 3. 11

## 2. *Public Funds and Stocks of Public Companies.*

The statute 8 Geo. 1. c. 22. and 31 Geo. 2. c. 22. s. 77. protect from forgery all the public funds, then, or since established by authority of Parliament. The stat. 31 Geo. 2. c. 22. s. 77. and 4 Geo. 3. c. 25. s. 15. extend the same protection to the parliamentary funds or stocks of public companies; and the 8 Geo. 1. c. 22 especially includes the South Sea company, as the 9 Geo. 1. c. 12 and other acts, especially include particular orders and public annuities.

† **Sect. 1.** By 8 Geo. 1. c. 22. IT IS RECITED, "That of late divers frauds and abuses have been committed by forging and counterfeiting the hands of some of the proprietors of the shares of and in the capital stock and funds of such body or bodies politic or corporate, as are established by act or acts of parliament in that behalf, or some of them, or by forging or counterfeiting the hands of persons entitled to the dividends attending the said shares, or some of them, or by forging or counterfeiting the hands of persons entitled to annuities, in respect whereof the proprietors have transferable shares in a capital stock or stocks established by act or acts of parliament, in proportion to their respective annuities; and divers frauds and abuses have been or may be committed by persons falsely and deceitfully personating the true and real proprietors of the said shares in stock, annuities and dividends, or some of them:" Now for the better preventing such pernicious practices for the future, it is ENACTED, "That if any person or persons whatsoever shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any letter of attorney, or other authority or instrument to transfer, assign, sell or convey any such share or shares, or any part of such share or shares of and in such capital stock or stocks as aforesaid, or  
" any

Forging letters  
of attorney, &c.

“ any of them, or to receive any such annuity or annuities, dividend or dividends as aforesaid, or any of them, or any part thereof, or shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any the name or names of any the proprietors of any such share or shares in stock, or of any the persons entitled to any such annuity or annuities, dividend or dividends as aforesaid, in or to any such pretended letter of attorney, instrument or authority, or shall knowingly and fraudulently demand, or endeavour to have any such share or shares in stock, or any part thereof, transferred, assigned, sold or conveyed, or such annuity or annuities, dividend or dividends, or any part thereof, to be received by virtue of any such counterfeit or forged letter of attorney, authority or instrument, or shall falsely and deceitfully personate any true and real proprietors of the said shares in stock, annuities and dividends, or any of them, or any part thereof, and thereby transferring or endeavouring to transfer the stock, or receiving or endeavouring to receive the money of such true and lawful proprietor, as if such offender were the true and lawful owner thereof; then and in every or any such case, all and every such person and persons (being thereof lawfully convicted in due form of law) shall be adjudged guilty of felony, and shall suffer as in cases of felony without benefit of clergy.”

or counterfeiting names of proprietors, &c.

or falsely personating real proprietors of shares, &c. felony.

† Sect. 2. By 31 Geo. 2. c. 22. s. 77. IT IS RECITED, “ That doubts may arise whether the punishment inflicted by 8 Geo. 1. c. 22. on persons guilty of the several species of forgery, and other offences therein mentioned, extends to the commission of the like forgery and offences in relation to such capital stocks and funds as have been established by the authority of parliament, since the passing of the said act, and may be hereafter established; ” therefore it is ENACTED, “ That if any person or persons whatsoever shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any letter of attorney, or other authority or instrument, to transfer, assign, sell or convey any share or shares, or any part of any share or shares, of or in any such capital stock or funds of any body or bodies politic or corporate established, or which shall be established, by any act or acts of parliament; or to receive any dividend or dividends attending any share or shares, or any part of any share or shares, of or in any such capital stock or funds as aforesaid; or to receive any annuity or annuities, in respect whereof any proprietor or proprietors have or shall have any transferable share or shares of or in any capital stock or stocks which now are, or hereafter shall be established by any act or acts of parliament, in proportion to their respective annuities; or shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any the name or names of any the proprietors of any such share or shares in stock, or of any the persons intitled to any such annuity or annuities, dividend or dividends, as aforesaid, in or to any such pretended letter of attorney, instrument or authority; or shall  
“ knowingly

Penalty in the recited act, &c. extended to this act, &c.



knowingly or fraudulently demand, or endeavour to have any such share or shares in stock, or any part thereof, transferred, assigned, sold or conveyed, or such annuity or annuities, dividend or dividends, or any part thereof, to be received by virtue of any such counterfeit or forged letter of attorney, authority or instrument; or shall falsely and deceitfully personate any true and real proprietors of the said shares in stock, annuities and dividends, or any of them, or any part thereof, and thereby transferring or endeavouring to transfer the stock, or receiving, or endeavouring to receive the money of such true and lawful proprietor, as if such offender were the true and lawful owner thereof; then, and in every or any such case, all and every such person or persons, being thereof lawfully convicted in due form of law, shall be deemed guilty of felony, and suffer death as a felon, without benefit of clergy."

Penalty of forging power to transfer any stock; or to receive any dividends or annuities thereon; or the fraudulent personating the owners thereof;

† Sect. 3. By 4 Geo. 3. c. 25. s. 15. IT IS RECITED, "That it is necessary that provision should be made for more effectually preventing the forging powers to transfer any such stock, or to receive such dividends or annuities, as are hereinafter mentioned, and the fraudulent personating the owners thereof;" and therefore IT IS ENACTED, "That if any person or persons whatsoever shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any letter of attorney, or other authority or instrument, to transfer, assign, sell or convey, any share or shares, or any part of any share or shares, of and in any capital stock or stocks of any body or bodies politic or corporate, which now are, or hereafter shall be, established by any act or acts of parliament; or any share or shares, or any part of any share or shares, of and in any annuities in respect whereof the proprietors of such annuities have or shall have transferable shares in any capital stock or stocks now established, or which shall hereafter be established by any act or acts of parliament, in proportion to their respective annuities; or any share or shares, or any part of any share or shares, of or in any other transferable annuities, which now are or hereafter shall be established by any act or acts of parliament; or to receive any such annuity or annuities, or any dividend or dividends attending such shares, or any of them, or any part thereof; or shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting, any the name or names of any the proprietors of any such share or shares in stock, or of any the persons intitled to any such annuity or annuities, dividend or dividends as aforesaid, in or to any such pretended letter of attorney, instrument or authority; or shall knowingly and fraudulently demand, or endeavour to have any such share or shares in stock or annuities, or any part thereof, transferred, assigned, sold, or conveyed, or such annuity or annuities, dividend or dividends, or any part thereof, to be received by virtue of any such counterfeit or forged letter of attorney, authority, or instrument; or shall falsely and deceitfully personate any true and real proprietor of the said shares in stock, annuities and dividends, or any of them, or any part thereof,

“ thereof, and thereby transferring or endeavouring to transfer  
 “ the stock or annuities, or receiving or endeavouring to receive;  
 “ the money of such true and lawful proprietor, as if such offen-  
 “ der were the true and lawful owner thereof; then, and in every  
 “ or any such case, all and every such person and persons (being  
 “ thereof lawfully convicted, in due form of law) shall be adjudged  
 “ guilty of felony, and shall suffer as in cases of felony without  
 “ benefit of clergy.”

is felony with-  
 out benefit of  
 clergy.

† Sect. 4. By 33 Geo. 3. c. 30. s. 1. IT IS RECITED, That the laws now in being have been found insufficient to prevent forgeries and frauds in the transferring stocks, annuities, and other public funds, transferable at the bank of *England*; and that, for the better preventing such forgeries and frauds in future, it is necessary that further provision should be made, as well to prevent frauds practised by persons taking upon themselves to make transfers, in the books of the governor and company of the bank of *England*, of stock or annuities, or other funds, transferable as aforesaid; whereof such persons are not the true owners and proprietors, as to prevent forgeries of such transfers in the names of the true owners or proprietors: and that it is also necessary, the better to prevent such forgeries and frauds, that the public accounts between the governor and company of the bank of *England* and the several owners and proprietors of stock, annuities, and other funds, transferable at the bank of *England*, should be secured from falsification by means of false entries therein, or of the alteration of any of the words or figures thereof, or by any other ways or means whatsoever: AND ENACTED, “ That if any person or persons  
 “ shall wilfully make, or assist in making, any transfer of any  
 “ interest, part, or share of or in any stock or stocks, annuity or  
 “ annuities, or other funds, transferable at the bank of *England*,  
 “ in any of the books of the said governor and company of the  
 “ bank of *England*, in which transfers of stock, annuities, or other  
 “ funds, as aforesaid, are made, in the name or names of any per-  
 “ son or persons not being the owner or owners, or proprietor or  
 “ proprietors, of such stock, annuities, or other funds, transfer-  
 “ able as aforesaid, with intent to defraud the said governor and  
 “ company of the bank of *England*, or any other body politic or  
 “ corporate; or any person or persons whatsoever, such person or  
 “ persons so making, or assisting in making, such transfer as  
 “ aforesaid, shall be deemed guilty of felony, and shall suffer death  
 “ as a felon or felons, without benefit of clergy.”

Persons making,  
 or assisting in  
 making trans-  
 fers of stock in  
 any other  
 names than the  
 owners, guilty  
 of felony;

† Sect. 5. By 33 Geo. 3. c. 30. s. 2. it is further enacted, “ That  
 “ if any person or persons whatsoever shall falsely make, forge, or  
 “ counterfeit, or cause or procure to be falsely made, forged, or  
 “ counterfeited, or shall willingly act or assist in the falsely making,  
 “ forging or counterfeiting of any transfer of any interest, part, or  
 “ share of or in any stock or stocks, annuity or annuities, or other  
 “ funds, transferable, or which, by any act or acts of parliament,  
 “ shall hereafter be made transferable, at the bank of *England*,  
 “ or of or in the capital stock belonging, or which hereafter shall  
 “ or may belong to the said governor and company of the bank  
 “ of *England*, called *bank stock*, or shall utter or publish as true  
 “ any such false, forged, or counterfeited transfer as aforesaid;

also persons  
 forging, or as-  
 sisting in forg-  
 ing, transfers,  
 &c.

“ knowing

“ knowing the same to be false, forged, or counterfeited, with intent to defraud the said governor and company of the bank of *England*, or any other body politic or corporate, or any person or persons whatsoever; all and every person or persons whatsoever so offending shall be deemed guilty of felony, and shall suffer death as a felon or felons, without benefit of clergy.”

and also persons making, or assisting in making, false entries in the books of the bank, &c.

† *Sect. 6.* By 33 Geo. 3. c. 30. s. 3. it is further enacted, “ That if any person or persons shall wilfully make, or assist in making, any false entry, or shall wilfully alter, or assist in altering, any word or figure in any entry in the books of account kept by the said governor and company of the bank of *England*, wherein the several accounts of the owners or proprietors of stock, annuities, or other funds, transferable at the bank of *England*, are entered and kept, or shall in any manner wilfully falsify the accounts of such owners and proprietors in the books of the said governor and company, wherein such accounts are entered and kept, with intent to defraud the said governor and company of the bank of *England*, or any other body politic or corporate, or any person or persons whatsoever, every such person or persons so offending shall be deemed guilty of felony, and shall suffer death as a felon or felons, without benefit of clergy.”

Persons making out, &c. false dividend warrants to be transported for 14 years.

By 33 Geo. 3. c. 30. s. 4. IT IS RECITED, That in order to cover and conceal forgeries and frauds in transfers, dividend warrants have been sometimes made out for different sums than the sums really due: AND ENACTED, “ That if any clerk, officer, or servant of, or other person or persons employed or intrusted by, the said governor and company, shall knowingly or willingly make out or deliver, or cause or procure to be made out or delivered, or willingly act or assist in the making out or delivering of any dividend warrant for a greater or less amount than the person or persons, on whose behalf, or pretended behalf, such dividend warrants shall be made out, is or are intitled to, with intent to defraud the said governor and company of the bank of *England*, or any other body politic or corporate, or any person or persons whatsoever, all and every such person or persons so offending, and being in due form of law convicted of any such offence or offences as aforesaid, shall be transported for seven years.”

By stat. 37 Geo. 3. c. 122. reciting that “ whereas by the statutes creating and authorising the transfer of the several public stocks, &c. transferable at the bank of *England*, it is provided, that all assignments or transfers thereof, shall be entered and registered in books to be kept by the accountant general of the bank, which entries shall be signed by the parties making such assignments or transfers; or, if such parties be absent, by their respective attorney or attornies thereunto lawfully authorised in writing under their hands and seals, to be attested by two or more credible witnesses; and the same regulation is prescribed and observed with respect to the attestation of letters of attorney for the transfer of any part of bank stock;” and further reciting that the same regulation prevails with respect to South Sea and East India stock, and that it is expedient that further provision should be made

made for the prevention of frauds, it is enacted, "That if any person or persons whatever shall, from and after the 1st day of August, 1797, falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly act or assist in the false making, forging, or counterfeiting the name or names, hand-writing or hands-writing of any person or persons, as or purporting to be the witness or witnesses attesting the execution of any letter of attorney or other authority, or instrument to transfer, assign, sell, or convey any interest, part or share of or in any stock or stocks, annuity or annuities, or other funds, or the dividends thereof, transferable, or which, by any act or acts of parliament, shall hereafter be made transferable at the bank of England, or of or in the capital stock belonging, or which hereafter shall or may belong, to the governor, &c. of the bank of England, called bank stock, or to the governor, &c. (of the South Sea company), or under their care or management, or of or in the capital stock belonging to the (East India Company) commonly called East India stock; or of any letter of attorney or other authority, or instrument, to receive any dividend or dividends on any of the said stocks, annuities or other funds; or shall alter, or publish as true, any such letter of attorney or other authority, or instrument, containing such false, forged or counterfeited name or names, hand-writing or hands-writing of such attesting witness or witnesses as aforesaid, knowing such name or names, hand-writing or hands-writing, to be false, forged, or counterfeited; all and every person or persons whatever so offending, and being convicted of any such offence, shall be adjudged guilty of felony, and shall be transported for seven years; or shall be adjudged to suffer such lesser punishment as the court before whom such offender or offenders shall be tried, shall think fit to award."

Forging names of witnesses attesting powers of attorney, shall be guilty of felony, and liable to be transported for 7 years.

The statutes 35 Geo. 3. c. 66. and 37 Geo. 3. c. 46. for making certain annuities created by the parliament of Ireland payable at the bank of England, protect these annuities by the same provisions that protect the English funds.

The statute of 9 Geo. 1. c. 12. for the more easy assigning or transferring of certain redeemable annuities payable at the exchequer by endorsements on the standing orders of the same, enables the proprietors of the said standing orders made forth, or to be made forth in pursuance of certain acts therein recited, by proper words of assignment to be endorsed, or such order to assign and transfer the same, and then by sect. 4. declares and enacts any person forging such assignments, or any letter of attorney to receive the interest growing due therein, or falsely personating the proprietor of such order, shall be guilty of a capital felony.

The stat. 45 Geo. 3. c. 89. "to alter and extend the provisions of the laws now in force for the punishment of the forgery of bank notes, bills of exchange, and other securities, to every part of Great Britain," enacts, "that if any person or persons shall, from and after the passing of this act, forge, counterfeit, or alter any bank note, bank bill of exchange, dividend warrant, or any

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"bond

bond or obligation under the common seal of the governor and company of the bank of England, or any indorsement thereon, or shall offer or dispose of, or put away any such forged, counterfeited or altered note, bill, dividend warrant, bond, or obligation, or the indorsement thereon, or demand the money therein contained or pretended to be due thereon, or any part thereof, of the said company, or any their officers or servants, knowing such note, bill, dividend warrant, bond, or obligation, or the indorsement thereon, to be forged, counterfeited, or altered, with intent to defraud the said governor and company, or their successors, or any other person or persons, body or bodies, politic or corporate whatsoever, every person or persons so offending, and being thereof convicted in due form of law, "shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy." s. 2.

John Henry Gade was tried before Lawrence, J. at the Old Bailey Feb. Sess. 1796, on an indictment charging that Wm. Harrison *was possessed of and entitled to 50l. interest or share in the 3 per cent. consolidated annuities*; and that the prisoner, while he was so possessed thereof, &c. did falsely make, forge, &c. a transfer of the said 50l. share with the name of the said W. H. thereto subscribed, purporting to be signed by the said W. H. and to be a transfer of the said 50l., and from the said W. H. to one W. W.—the tenor of which is as follows, (setting it out,) with intent to defraud the governor and company of the bank of England. Others charged it to be with intent to defraud W. H. and W. W. There were also other counts laying the offence different ways, but not material to the points of consideration.

It was proved that the prisoner and Henry Harland, being executors of John Howard, who had by his will given 50l. in the 3 per cent. consols to his grandson William Harrison, on the 11th Jan. 1796, transferred the same to the name of William Harrison, *but the transfer never was accepted by William Harrison*. That afterwards, on the 14th of January, the prisoner brought his own son with him to the bank, whom he represented as William Harrison; and by the intervention of a broker the stock was agreed to be sold to one William West. The prisoner's son signed the transfer, but used : double ss in the name Harrison, which not agreeing with the bank books, it caused a delay, as the clerk required an affidavit of identity. The money was not paid over which the broker received from West, and *the transfer was not witnessed*, which, according to the printed form of transfer used at the bank, should be done. It was objected for the prisoner that as the st. 33 Geo. 3. c. 28. directs the form of the transfer, and requires "that the several persons to whom" such transfer shall be made *shall underwrite their acceptance thereof*, and no other method of transferring or assigning shall "be good or available in law;" that the evidence did not support the indictment; first, for want of the acceptance of Harrison of the transfer made to him by the executors of Howard, till which time it was contended the transfer was incomplete and he was not possessed of the stock. Secondly, Because that till  
the

the stock was accepted, no transfer could be made of it at all. Thirdly, Because the instrument given in evidence as a transfer in the name of William Harrison was not witnessed, which being, as was contended, a part of the words in which transfers were conceived, the instrument was not available in law, and therefore no transfer. In the June sessions following Mr. J. Buller delivered the opinions of the judges, as is stated to the following effect: 1. That the stock vested in William Harrison by the mere act of transferring it into his name, and that if he had died it would have gone to his executors as part of his personal estate. 2. That the nature of the offence would not have been altered if W. H. had not had any stock standing in his name; for the forgery would not have been less complete if Harrison had really had no stock. As to the third objection, the judges all thought that the entry and signatures stated in the indictment were a complete transfer without the attestation of witnesses, which was no part of the instrument, but only required by the bank for their own protection *ex abundanti cautela*. (E. P. C. p. 876.)

### 3. *Notes and other Securities of the Bank of England and other Public Companies.*

#### *Of the Bank of England.*

† Sect. 1. By 8 and 9 Will. 3. c. 20. s. 36. it is enacted, See ante, p. 273.  
45 Geo. 3. c. 89.  
et post, 280.  
“ That the forging or counterfeiting the common seal of the said  
“ corporation of the governor and company, or of any sealed bank  
“ bill made or given out in the name of the said governor and  
“ company for the payment of any sum of money, is felony  
“ without benefit of clergy.”

† Sect. 2. The st. 15 Geo. 2. c. 13. s. 11. enacts, “ If any per- Forging or alter-  
ing bond, &c.  
felony without  
benefit of clergy.  
“ son or persons shall forge, counterfeit, or alter any bond or  
“ obligation under the common seal of the said company, or any  
“ indorsement thereon, or shall offer or dispose of, or put  
away any such forged, counterfeited, or altered bond or obliga-  
tion, or the indorsement thereon, or demand the money therein  
contained, or pretended to be due thereon, or any part thereof,  
of the said company, or any their officers or servants, knowing  
such bond or obligation, or the indorsement thereon, to be  
forged, counterfeited or altered with intent to defraud the  
said company or their successors, or any other person or per-  
sons whatsoever; every person or persons so offending shall be  
deemed guilty of felony without benefit of clergy.”

† Sect. 3. By 8 and 9 Will. 3. c. 20. s. 36. “ The forging or  
counterfeiting of any bank note of any sort whatsoever, signed  
for the governor and company of the bank of *England*, or alter-  
ing or erasing any indorsement of any bank bill or note of any  
sort, is declared to be felony without benefit of clergy.”

† Sect. 4. By 11 Geo. 1. c. 9. s. 6. IT IS RECITED, “ That of Forging, &c.  
bank bills or  
notes, felony.  
late divers frauds and deceits have been put upon the governor  
and company of the bank of *England*, and other persons, by the  
altering, forging and counterfeiting of the bank bills and bank

notes of the said governor and company, and by the erasing and altering the said bills and notes, and the indorsements thereupon, and by the tendering in payment, uttering, vending, exchanging and bartering, of such altered, forged, counterfeited and erased bills and notes, and the indorsements thereupon, to the prejudice of public credit, and to the great hurt and diminution of trade and commerce;" for redressing whereof for the future, it is ENACTED, "That if any person or persons shall alter, forge or " counterfeit any bank-bill or bank-note, made or given out for " the payment of any sum of money, by or for the said governor " and company, or any bank-note of any sort whatsoever, or shall " erase or alter any such bill or note, or any indorsement there- " upon, or shall tender in payment, utter, vend, exchange or bar- " ter, any such altered, forged, or counterfeited bill or note, or " any erased or altered bill or note, or the indorsement there- " upon, or demand to have the same exchanged for ready money " by the said governor and company, or their successors, or any " other person or persons (knowing such bill or note, or the in- " dorsement thereupon, so tendered or demanded to be ex- " changed, vended or bartered, to be altered, forged, counterfeited " or erased) and with intention to defraud the said governor and " company, or their successors, or any other person or persons, " body politic or corporate; then every such person or persons " so offending (being thereof lawfully convicted) shall be, and is " hereby declared and adjudged a felon, and shall suffer as in " cases of felony."

Persons coun-  
terfeiting, or al-  
tering bank  
notes, &c. to  
suffer death.

† *Sect. 5.* By 15 Geo 2. c. 13. s. 11. it is enacted, "That if any person or persons shall forge, counterfeit or alter any bank-  
note, bank-bill of exchange, dividend warrant, or any bond or  
obligation under the common seal of the said company, or any  
indorsement thereon, or shall offer or dispose of or put away  
any such forged, counterfeit, or altered note, bill, dividend  
warrant, bond, or obligation, or the indorsement thereon, or  
demand the money therein contained or pretended to be due  
thereon, or any part thereof, of the said company, or any their  
officers or servants, knowing such note, bill, dividend warrant,  
bond, or obligation, or the indorsement thereon, to be forged,  
counterfeited, or altered, with intent to defraud the said com-  
pany, or their successors, or any other person or persons what-  
soever; every person or persons so offending, and being thereof  
convicted in due form of law, shall be deemed guilty of felony,  
and shall suffer death as a felon, without benefit of clergy."

And in order to throw greater difficulties in the way of those who meditated the forgery of bank-notes, it was made penal to fabricate the sort of paper used by the bank for their notes.

### *The Counterfeiting Bank Paper.*

Persons making  
frames, &c. for  
forging notes of  
the bank of  
England, or  
having in their  
custody moulds

† For by statute 13 Geo. 3. c. 79. s. 1. IT IS RECITED, "That frauds have lately been committed by forging the notes and bills of the governor and company of the bank of *England*; notwithstanding the statutes now in force for punishing and suppressing the same:" and, for the more effectual preventing such

such practices, IT IS ENACTED, " That if any person or persons (other than the officers, workmen, servants, or agents, for the time being, of the said governor and company, to be authorised and appointed for that purpose by the said governor and company, and for the use of the said governor and company only), shall make or use, or cause or procure to be made or used, or knowingly aid or assist in the making or using; or (without being authorised and appointed as aforesaid) shall knowingly have in his, her, or their custody or possession (without lawful excuse, the proof whereof shall lie upon the person accused,) any frame, mould, or instrument, for the making of paper, with the words *Bank of England* visible in the substance of such paper; or shall make, or cause or procure to be made, or knowingly aid or assist in the making any paper, in the substance of which the said words *Bank of England* shall be visible; or if any person (except as before excepted) shall, by any art, mystery, or contrivance, cause or procure the said words, *Bank of England*, to appear visible in the substance of any paper whatsoever, or knowingly aid or assist in causing the said words *Bank of England*, to appear in the substance of any paper whatsoever; every person so offending in any of the cases aforesaid, and being thereof lawfully convicted, shall, for such offence, be deemed and adjudged a felon, and shall suffer death as in cases of felony without benefit of clergy."

or Instruments for that purpose, adjudged guilty of felony, &c.

† By 13 Geo. 3. c. 79. s. 2. IT IS RECITED, " That unwary and other persons have taken in payment, and otherwise received, notes, inland bills, and bills of exchange, with certain words and characters so nearly resembling the notes and bills of the said governor and company, as to appear to such persons to be the notes or bills of the bank of *England*, which, if continued to be done, will be to the great prejudice of public credit:" AND ENACTED, " That if any person or persons, without being authorised and appointed as aforesaid, shall engrave, cut, etch, or scrape in mezzotinto, or shall cause or procure to be engraved, cut, etched, or scraped in mezzotinto, or shall knowingly aid or assist in the engraving, cutting, etching, or scraping in mezzotinto, in or upon any plate of copper, brass, steel, pewter, or of any other metal or mixture of metals, or upon wood, or any other material, or any plate whatsoever, any promissory note, inland bill, or bill of exchange, or blank promissory note, inland bill, or bill of exchange, or part of a promissory note, inland bill, or bill of exchange, containing the words, *Bank of England*, or *Bank Post Bill*, or any word or words expressing the sum or amount, or any part of the sum or amount of such promissory note, inland bill, or bill of exchange, in white letters or figures on a black ground; or shall use any such plate so engraved, cut, etched, or scraped in mezzotinto, or shall use any other instrument for the making or printing any such promissory note, inland bill, or bill of exchange, or blank promissory note, inland bill, or bill of exchange, or part of a promissory note, inland bill, or bill of exchange; if any person (without being authorised and appointed as aforesaid) shall knowingly have in his, her, or their custody any such plate or instrument,

Persons engraving notes to resemble inland bills, &c.

" or



" or shall knowingly and wilfully utter or publish any such promissory note, inland bill, or bill of exchange, blank promissory note, inland bill, or bill of exchange ; every such offender shall, being convicted thereof, be committed to the common gaol of the county or place where the offence shall be committed, for any space not exceeding six months." With a proviso (s. 3.) not " to extend to such person, who, being possessed of any such note or bill, shall only utter the same by carrying the same for payment to the issuers, drawers, acceptors, or indorsers thereof respectively, or using proper means to compel the payment of any such note or bill."

Further provisions.

By the 41 Geo. 3. c. 39. RECITING, " that whereas the forgery of bank notes, bank bills of exchange, and bank post bills, had much increased, and that to prevent it and also to facilitate the detection of it; the bank of England had procured to be made for the future issue of bank notes, &c. a new paper of a different manufacture from that formerly used either by the bank or any other; in which new paper, instead of the bar lines being straight and parallel to each other, as in the paper heretofore used, the same are curved or waving, and the laying wire lines are also formed in a waved or curved shape; and the numerical account or sum of each bank note, &c. expressed in a word or words in Roman letters, is made to appear visible in the substance of the paper; and whereas it is expedient, for the better prevention of the forgery of bank notes, &c. that the said governor and company should have the exclusive privilege of using, in the issue of their notes and bills, the paper hereinbefore described," IT IS ENACTED, " That if any person or persons (other than the officers, workmen, servants, or agents, for the time being, of the said governor, &c. to be authorised and appointed for that purpose by the said governor, &c. and for the use of the said governor, &c. only) shall make, or use, or cause, or procure to be made, or used, or knowingly aid or assist in the making, or using, or (without being authorised or appointed as aforesaid,) shall knowingly have in his, her, or their custody, or possession, (without lawful excuse, the proof whereof shall lie upon the person accused,) any frame, mould, or instrument for the making of paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape, or with any number, sum, or amount, expressed in a word or words, in Roman letters, visible in the substance of such paper; or shall manufacture, make, use, vend, expose to sale, publish or dispose of, or cause or procure to be manufactured, &c. or aid, or assist in the manufacturing, &c. or (without being authorised or appointed, as aforesaid) shall knowingly have in his, her, or their custody, or possession, any paper whatever with curved or waving bar lines, &c. or if any person or persons (except as before excepted) shall by any art, mystery, or contrivance, cause or procure the numerical sum or amount of any bank note, bank bill of exchange, or bank post bill, blank bank note, blank bank bill of exchange, or blank bank post bill, in a word or words to appear visible in the substance of the paper wherein the same shall be written or printed, or shall knowingly aid or assist

“ assist in carving the numerical sum or amount of any bank note, &c. in a word or words in Roman letters to appear visible in the substance of the paper, wherein the same shall be written or printed; every person or persons so offending in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of 14 years.”

By s. 2. the act was not to extend to notes already issued on the old paper; nor to bills or notes which had the amount expressed in guineas; or having a numerical figure expressing the amount in pounds sterling; nor to the making or using any paper with curved lines, not resembling the bank paper.

Sect. 5. ENACTS, “ that if any person shall, from and after the passing of this act, purchase or receive from any other person or persons any forged or counterfeited bank note, bank bill of exchange, bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, knowing the same to be forged or counterfeited; or shall knowingly or wittingly have in his, her or their custody or possession, or in his, her, or their dwelling-house, out-house, lodging, or apartments any forged or counterfeited bank note, and knowing the same to be forged, or counterfeited, (without lawful excuse, the proof whereof shall lie upon the person accused,) every person or persons so offending and being thereof convicted according to law, shall be adjudged a felon and shall be transported for the term of 14 years.”

Purchasing or receiving bank notes, &c. or blank notes, felony, 14 years transportation.

Sect. 6. RECITING, that “ Whereas the laws now in force do not inflict a sufficient punishment upon offenders concerned in engraving plates, and printing blank forms for bank notes, bank bills of exchange, and bank post bills, for the purpose of being made use of, in perpetrating the crime of forgery;” ENACTS, “ That if any person or persons, from and after the passing of this act, shall engrave, cut, etch, scrape, or, by any other means or device, make or shall cause or procure to be engraved, &c. or shall knowingly aid, or assist, in the engraving, &c. in or upon any plate of copper, brass, steel, pewter, or of any other metal or mixture of metals, or upon any wood or any other materials, or any plate whatsoever, any bank note, bank bill of exchange, or bank post bill, purporting to be the note or bill of exchange, or bank post bill, or blank bank note, or blank bank bill of exchange, or blank bank post bill, or part of the note, or bill of exchange, or bank post bill, of the governor and company of the bank of England, without an authority in writing for that purpose from the governor, &c. or shall use any such plate so engraved, cut, etched, scraped, or by any other means or device make, or shall use any other instrument or device, for the making or printing of any such bank note, &c. without such authority in writing as aforesaid; or if any person or persons shall, after the passing of this act, without such authority as aforesaid, knowingly have in his, her, or their custody, any such plate, instrument, or device; or shall, without such authority as aforesaid, knowingly and wilfully utter, publish, dispose of, or put away,

Engraving bank plates, &c.

Felony and 7  
years transpor-  
tation.

"away, any such bank note, &c. (as last before named;) every  
"such person so offending and being thereof convicted shall  
"be adjudged a felon and transported for 7 years."

By stat. 45 Geo. 3. c. 89. it is ENACTED, "That if any person  
"or persons shall, from and after the passing of this act, forge,  
"counterfeit, or alter any bank note, bank bill of exchange,  
"of dividend warrant, or any bond or obligation under the  
"common seal of the governor and company of the bank of  
"England, or any indorsement thereon, or shall offer, or dis-  
"pose of, or put away any such forged, counterfeit or altered  
"note, bill, dividend warrant, bond, or obligation, or the in-  
"dorsement thereon, or demand the money therein contained,  
"or pretended to be due thereon, or any part thereof, of the said  
"company, or any their officers or servants, knowing such note,  
"bill, dividend warrant, bond or obligation, or the indorsement  
"thereon, to be forged, counterfeited or altered with intent to  
"defraud the said governor and company or their successors,  
"or any other person or persons, body or bodies, politic or cor-  
"porate whatsoever, every person so offending and being thereof  
"convicted in due form of law, shall be deemed guilty of felony  
"and shall suffer death as a felon without benefit of clergy."  
And by s. 8. the act was to extend to every part of Great Bri-  
tain, any law, statute, or usage to the contrary notwithstanding.

Further provi-  
sions.

The statute 52 Geo. 3. c. 138. RECITING, "that divers frauds  
have been practised by making and publishing papers with cer-  
tain words and characters, so nearly resembling the notes and  
bills of the governor and company of the Bank of England, as  
to appear to ignorant and unwary persons to be the notes or bills  
of the said governor and company," and then "for prevention  
thereof," ENACTS, (by s. 5.) "that if any person, from and after  
"1st August, 1812, shall engrave, cut, etch, scrape, or by any  
"other means or device make, or shall cause or procure to be  
"engraved, cut, etched, scraped, or by any other means or device  
"made, or shall knowingly aid or assist in the engraving, cutting,  
"etching, scraping, or by any other means or device making, in  
"or upon any plate of copper, brass, steel, pewter, or of any  
"other metal or mixture of metals, or upon wood, or any other  
"materials, or upon any plate whatsoever, any word or words,  
"figure or figures, character or characters, the impression taken  
"from which shall resemble or be apparently intended to re-  
"semble the whole or any part of any of the notes or bills of  
"the said governor and company, commonly called bank notes  
"and bank post bills, or shall contain any word, number, figure,  
"or character in white on a black, sable, or dark ground, without  
"an authority in writing for that purpose from the said governor  
"and company, to be produced and proved by the party ac-  
"cused; or shall (without such authority as aforesaid) use any  
"such plate, wood, or other material so engraved, cut, etched,  
"scraped, or by any other means or device made, or shall use  
"any other instrument or device for the making or printing upon  
"any paper or other material any word or words, figure or  
"figures, character or characters, which shall be apparently in-  
"tended to resemble the whole or any part of any of the said  
"notes

"notes or bills of the said governor and company, or any word, number, figure, or character in white on a black, sable, or dark ground; or if any person or persons shall, from and after 1st August, 1812, (without such authority as aforesaid,) knowingly have in his, her, or their custody any such plate, instrument, or device, or shall knowingly and wilfully utter, publish, or dispose of or put away any paper or other material containing any such word or words, figure or figures, character or characters, as aforesaid, or shall knowingly or wittingly have in his, her, or their custody or possession any paper, or other material containing any such word or words, figure or figures, character or characters, as aforesaid (without lawful excuse, the proof whereof shall lie upon the person accused); every person so offending, in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

"Nothing in this act contained shall apply to any paper or writing whatsoever (other than papers or writings resembling such notes or bills as aforesaid) containing an impression from any plate or plates, or other device whatsoever, with white letters upon black, sable, or dark ground, which shall, previous to the passing of this act, have been in the custody of any person or persons whatsoever." s. 6.

In *Rex v. Bigg*, the prisoner was indicted for *razing* an indorsement from a bank note (under stat. 8 and 9 W. 3. c. 20.) The special verdict found that he had expunged the words and figures following from the face of the note, "22d Feb. 1714, paid 90l." which had been written by a bank clerk as denoting so much money had been paid upon the note; this had been done by means of some liquid discharging the ink. It was objected *inter alia* that the receipt on the face of the note was not an indorsement, and that discharging the writing by means of a liquid was not a *razing*. But the judges held the conviction right.

*R. v. Bigg*,  
1 Str. 18.  
3 P. Wms. 419  
2 E. P. C. 882.

W. Jones was indicted on the 15 Geo. 2. c. 13. s. 11. for putting away the following paper writing *purporting to be a bank note*.

No. F. 946.

I promise to pay John Wilson, Esq.  
or Bearer, Ten pounds.

London, March 4, 1776.

£Ten  
Ent. John Jones.

For Self and Company  
of my Bank in England.

He passed this away to one Rayner, telling him it was a good bank note, with intent to defraud him. The question made on argument was whether this *purported to be a bank note*, and the court, without hearing counsel for the prisoner, were of opinion that it did not. Lord Mansfield said that the representations of the prisoner afterwards could not vary the purport of the instrument, which is what appears on the face of it, and, on the face of it, it did not purport to be a bank note.

† It

Rex v. Dawson,  
1 Stra. 20.

† It has also been determined, that the erasing, and altering the word *two*, in a bank note for two hundred and twenty pounds, into the word *five*, whereby the note is made to purport to be a bank note for five hundred and twenty pounds, is clearly a forgery within the 8 and 9 Will. 3. c. 20.

Elliot's Case,  
Cases Cro.  
Law, 162.

† It has also been decided, that a forged note purporting to be a bank note, although the word "pounds" is omitted in the body of it, and the paper on which it is written has not the usual *water mark*, is a sufficient counterfeiting of a note for the payment of money, to bring the offender within the above statutes.

Newland's  
Case, Cases  
Cro. Law, 256.

† It is also decided, that *the cashier* whose name is signed to a forged note "For the Governor and Company of the Bank of *England*," is a competent witness to prove that the name so signed is not his hand-writing.

*In regard to the Securities of other Public Companies.*

*South Sea Company.*

Forging or counterfeiting seal of South Sea company, felony without benefit of clergy.

" If any person or persons shall forge or counterfeit the common seal of the South Sea Company, or shall forge, counterfeit, or alter any bond or obligation under the common seal of the said company, or shall offer to dispose of or pay away any such forged, counterfeited, or altered bond (knowing the same to be such), or shall demand the money therein contained or pretended to be due thereon, or any part thereof, of the said company or any of their officers (knowing such bond or obligation to be forged, counterfeited, or altered), with intent to defraud the said company, or their successors, or any other person or persons whatsoever, every such person or persons so offending (and being convicted thereof in due form of law), shall be guilty of felony, and shall suffer death as a felon, without benefit of clergy." 9 Anne, c. 21. s. 57. 6 Geo. 1. c. 4. s. 56.

The stat. 6 Geo. 1. c. 11. s. 50. RECITING, " That the governor and company of merchants trading to the South Seas and other parts of America, and for encouraging the fishery, may issue out receipts under the hand or hands of one or more of their officers, from time to time, upon or for subscriptions to be by the said company taken for increasing their capital stock, pursuant to the 6 Geo. 1. c. 4.; and may also issue out warrants, under the hand or hands of one or more of their officers, for the dividend from time to time to be made to the proprietors of the stock in the said company;" ENACTS, " That if any person or persons shall forge, counterfeit, or alter any such receipt or receipts, warrant or warrants, or any indorsement or writing, indorsements or writings, thereupon or therein, or shall tender any such forged, counterfeited, or altered receipt or receipts, warrant or warrants, or any such receipt or receipts, warrant or warrants, with such counterfeit indorsement or writing thereon

“thereon or therein, knowing the same to be so forged, counterfeited, or altered, to the said company or any of their officers, or shall offer to alienate or dispose of the same, knowing the same to be forged, counterfeited, or altered, and with intent to defraud the said company, or any other person or persons, bodies politic or corporate, then and in such case every such person or persons so offending, being thereof lawfully convicted, shall be adjudged a felon, and shall suffer death as in cases of felony, without benefit of clergy.”

The stat. 12 Geo. 1. c. 32. s. 9. ENACTS, “That if any person or persons shall, after 1st May, 1726, forge or counterfeit, or procure to be forged or counterfeited, or wilfully act or assist in the forging or the counterfeiting, any bond or obligation under the common seal of the Governor and Company of Merchants of Great Britain trading to the South Seas and other parts of America, and for encouraging the fishery; or shall utter or publish any such, knowing the same to be forged or counterfeited, with intention to defraud any person whatsoever; then every such person and persons so offending (being thereof lawfully convicted) shall be, and is hereby declared and adjudged to be, guilty of felony, and shall suffer death as in case of felony, without benefit of clergy.”

*East India Company.*

By stat. 12 Geo. 1. c. 32. s. 9. it is enacted, “That if any person or persons shall forge or counterfeit, or procure to be forged or counterfeited, or wilfully act or assist in forging or counterfeiting, any bond or obligation under the common seal of the United Company of Merchants of England trading to the East Indies, or any indorsement or assignment thereon, or shall utter or publish any such, knowing the same to be forged or counterfeited, with intention to defraud any person whatsoever, then every such person and persons so offending (being thereof lawfully convicted), shall be, and is hereby declared and adjudged to be, guilty of felony, and shall suffer death as in case of felony, without benefit of clergy.”

*The Seal or Securities of the British Plate Glass Company.*

By 13 Geo. 3. c. 38. s. 28. revived by the 33 Geo. 3. (c. 17.) s. 23. it is made felony to forge or counterfeit the seal of the Governor and Company of the British Cast Plate Glass Manufactory, or any deed or writing under their common seal, or to demand any money from the said company or their servants in pursuance of such forged writing, &c. knowing such writing to be forged, with intent to defraud, &c. Plate Glass Manufactory.

By 4 Geo. 3. c. 37. s. 15. the like enactment is made in favour of the English Linen Company. British Linen Company.

*Securities of the London, Royal Exchange, and Globe Insurance Companies.*

By stat. 6 Geo. 1. c. 18. it is enacted, “That if any person or persons shall forge or counterfeit the common seal of (either “the

" the London, or Royal Exchange Assurance Companies), or  
 " shall forge, counterfeit, or alter any policy, bill, bond, or obli-  
 " gation under the common seal of either of the same corpora-  
 " tions, or shall offer to dispose of or put away any such forged,  
 " counterfeited, or altered policy, bill, bond, or obligation, know-  
 " ing the same to be such, or shall demand the money therein  
 " contained, or pretended to be due thereon, or any part thereof,  
 " of or from such of the same corporations as shall be mentioned  
 " or referred to therein, or to any of their officers, knowing such  
 " policy, bill, bond, or obligation to be forged, counterfeited, or  
 " altered, with intent to defraud the same corporation or their  
 " successors, or any other person or persons whatsoever, every  
 " such person or persons so offending, and being convicted  
 " thereof in due form of law, shall be guilty of felony, and suffer  
 " as in cases of felony, without benefit of clergy."

By stat. 39 Geo. 3. c. 83. s. 22. a like protection is extended to the Globe Insurance Company.

#### 4. Stamps.

Stamps, denoting the payment of certain duties, are required by various acts of parliament to be affixed on a multitude of written and printed documents. And in most of those acts it is made a felony to counterfeit or forge the stamps thereby imposed. But as the stat. 55 Geo. 3. c. 184. seems to supersede all former provisions (for it does not in words repeal them), it is not thought necessary to insert them, but to give the 7th sect. of 55 Geo. 3. c. 184. which ENACTS, " That if any person shall  
 " forge or counterfeit, or cause or procure to be forged or coun-  
 " terfeited, any stamp or die, or any part of any stamp or die,  
 " which shall have been provided, made, or used in pursuance  
 " of this act, or in pursuance of any former act or acts relating  
 " to any stamp duty or duties; or shall forge, counterfeit, or  
 " resemble, or cause or procure to be forged, counterfeited, or  
 " resembled, the impression or any part of the impression of any  
 " such stamp or die as aforesaid, upon any vellum, parchment,  
 " or paper; or shall stamp or mark, or cause or procure to be  
 " stamped or marked, any vellum, parchment, or paper, with any  
 " such forged or counterfeited stamp or die, or part of any stamp  
 " or die as aforesaid, with intent to defraud his majesty, his heirs  
 " or successors, of any of the duties hereby granted, or any part  
 " thereof; or if any person shall utter or sell, or expose to sale,  
 " any vellum, parchment, or paper having thereon the impression  
 " of any such forged or counterfeited stamp or die, or part of  
 " any stamp or die, or any such forged, counterfeited, or resem-  
 " bled impression or part of impression as aforesaid, knowing  
 " the same respectively to be forged, counterfeited, or resembled;  
 " or if any person shall privately and secretly use any stamp or  
 " die which shall have been so provided, made, or used as afore-  
 " said, with intent to defraud his majesty, his heirs or successors,  
 " of any of the said duties or any part thereof; or if any person  
 " shall fraudulently cut, tear, or get off, or cause or procure to  
 " be cut, torn, or got off, the impression of any stamp or die  
 " which shall have been provided, made, or used, in pursuance of  
 " this

Forging stamps  
or dies, felony  
without benefit  
of clergy.

“ this or any former act, for expressing or denoting any duty or  
 “ duties under the care and management of the commissioners  
 “ of stamps, or any part of such duty or duties, from any vellum,  
 “ parchment, or paper whatsoever, with intent to use the same  
 “ for or upon any other vellum, parchment, or paper, or any  
 “ instrument or writing charged or chargeable with any of the  
 “ duties hereby granted; then, and in every such case, every  
 “ person so offending, and every person knowingly and wilfully  
 “ aiding, abetting, or assisting any person or persons so commit-  
 “ ting any such offence, and being thereof lawfully convicted,  
 “ shall be adjudged guilty of felony, and shall suffer death as a  
 “ felon, without benefit of clergy.”

*Plate Stamps.*

With respect to the forging and counterfeiting, or transposing of stamps on gold and silver plate, &c., the marks on which have been before adverted to in the section relating to bullion (p. 32.), the stat. 12 Geo. 2. c. 26. s. 8. first made the offences punishable by a forfeiture of £100, or, in default of payment, by imprisonment. But by stat. 21 Geo. 2. c. 32. s. 4. reciting, that the punishment prescribed by the former statute had not been found sufficient to deter offenders, repeals the former provision, and ENACTS (s. 15.), “ That if any person whatsoever, after the  
 “ 5th day of July, 1758, shall cast, forge, or counterfeit, or  
 “ cause or procure to be cast, forged, or counterfeited, any mark  
 “ or stamp used or to be used for making gold or silver plate, in  
 “ pursuance of the said act, or of any other act or acts of parlia-  
 “ ment now in force, by the company of goldsmiths in London,  
 “ or by the wardens, or assayer or assayers at York, Exeter,  
 “ Bristol, Chester, Norwich, or Newcastle upon Tyne, or by any  
 “ maker or worker of gold or silver plate, or any or either of  
 “ them; or shall cast, forge, or counterfeit, or cause or procure  
 “ to be cast, forged, or counterfeited, any mark, stamp, or  
 “ impression in imitation of or to resemble any mark, stamp, or  
 “ impression made or to be made with any mark or stamp used  
 “ or to be used as aforesaid by the said company of goldsmiths in  
 “ London, or by the said wardens, or assayer or assayers, or by  
 “ any maker or worker of gold or silver plate, or any or either of  
 “ them; or shall mark or stamp, or cause or procure to be  
 “ marked or stamped, any wrought plate of gold or silver, or any  
 “ wares of brass or other base metal silvered or gilt over, and  
 “ resembling plate of gold or silver, with any mark or stamp  
 “ which hath been or shall be forged or counterfeited at any  
 “ time, either before, on, or after the said 5th day of July, in  
 “ imitation of or to resemble any mark or stamp used or to be  
 “ used as aforesaid by the said company of goldsmiths in London,  
 “ or by the said wardens or assayer or assayers, or by any maker  
 “ or worker of gold or silver plate, or any or either of them; or  
 “ shall transpose or remove, or cause or procure to be transposed  
 “ or removed, from one piece of wrought plate to another, or to  
 “ any vessel of such base metal as aforesaid, any mark, stamp,  
 “ or impression, made or to be made by or with any mark or  
 “ stamp used or to be used as aforesaid by the said company of  
 “ goldsmiths in London, or by the said wardens or assayer or  
 “ assayers,



“assayers, or by any maker or worker of gold or silver plate, or  
 “any or either of them; or shall sell, exchange, or expose to  
 “sale, or export out of this kingdom, any wrought plate of gold  
 “or silver, or any vessel of such base metal as aforesaid, with  
 “any such forged or counterfeit mark, stamp, or impression  
 “thereon, or any mark, stamp, or impression which hath been  
 “or shall be transposed or removed from any other piece of  
 “plate at any time either before, on, or after the said 5th of  
 “July; knowing such mark, stamp, or impression to be forged,  
 “counterfeited, or transposed or removed as aforesaid, or shall  
 “wilfully and knowingly have or be possessed of any mark or  
 “stamp which hath been or shall be forged or counterfeited at  
 “any time, either before, on, or after the said 5th July, in imita-  
 “tion of or to resemble any mark or stamp used or to be used  
 “as aforesaid by the said company of goldsmiths in London, or  
 “by the said wardens or assayer or assayers, or by any maker or  
 “worker of gold or silver plate, or any or either of them; every  
 “such person offending in any, each, or either of the cases  
 “aforesaid, being thereof lawfully convicted, shall be adjudged  
 “guilty of felony, &c. without benefit of clergy.”

The same provisions are re-enacted with respect to the duty mark of the king's head, imposed by the st. 24 Geo. 3. st. 2. c. 53. s. 16. including such mark imposed by the company of goldsmiths in Edinburgh, as well as London; and by the Birmingham or Sheffield company, as well as by the wardens and assayers at York, &c.; and referring to the 1st July, 1784, instead of the 5th July, 1758. Then the st. of 38 Geo. 3. c. 69. by which *gold wares* were allowed to be manufactured of a lower standard than was before allowed, viz. at the standard of 18 instead of 22 carats in a pound troy, enacts, s. 7. “That from and  
 “after the 1st day of October, if any person shall forge, cast, or  
 “counterfeit, or cause or procure to be forged, &c. the mark or  
 “stamp used or directed to be used *in pursuance of this act*  
 “(viz. 38 Geo. 3.) for the marking or stamping of gold plate by  
 “the company of goldsmiths in London or Edinburgh, or the  
 “Birmingham or Sheffield company, or by the wardens, or as-  
 “sayer or assayers at York, Exeter, Bristol, Chester, Norwich,  
 “or Newcastle upon Tyne, or any or either of them, &c.” and then follows, verbatim, the provisions of the former acts, except that it does not, as they do in general terms, extend to the *makers and workers* of gold plate, as well as to the companies and assayers before mentioned. And also that it varies the description of the wares therein named to “any wrought plate of  
 “gold, or any wares of silver, brass, or other metal gilt over and  
 “resembling plate of gold.” And then, instead of making the offence capital, it concludes, “that every such person offending  
 “in any such or either of the cases aforesaid, being thereof law-  
 “fully convicted, shall be adjudged guilty of felony, and shall be  
 “transported for seven years.”

It is singular (Mr. East observes) that when this subject was under the review of the legislature, and the punishment of the offences under this act limited to transportation, offenders,  
*ejusdem*

*ejusdem generis*, under the former act, should be left subjected to capital punishments. (2 East, P. C. 8292.)

By st. 10 Anne, c. 19. s. 17. which directs the commissioners of customs to provide certain seals or stamps for imported linens, <sup>Linens and calicoes.</sup> and the commissioners for managing the duties on silks, calicoes, linens, and stuffs, to be printed or dyed in Great Britain, to provide other seals or stamps for marking the same, enacts, "That if any person shall forge or counterfeit any stamp or seal to resemble any stamp or seal which shall be provided or made in pursuance of this act, or shall counterfeit or resemble the impression of the same upon any of the commodities chargeable by this act, thereby to defraud her majesty, &c. of any of the said duties hereby granted, every person so offending, being thereof convicted in due form of law, shall be adjudged a felon without benefit of clergy." And a penalty of 100*l.* and the pillory is inflicted on any person selling any of the articles knowingly, with a forged seal or stamp.

By various other statutes, duties are imposed upon printed calicoes, stained paper, leather, imported lace, &c. which are directed by the respective acts to be sealed or stamped, to denote the payment of the duties, by seals, &c. to be provided by the respective commissioners under whose direction the management is placed.

For the offence of transposing stamps from one piece of plate to another, see, *post*, Offences against the Revenue.

It has been held, that if the indictment charge the stamp to be a *lion rampant*, and the stamp produced in evidence be a *lion passant*, it is a variance and does not support the indictment. (Lee's case, C. C. L. 323.)

### 5. *Official Papers, Securities, and Documents.*

#### *Testimonial of a Justice of the Peace.*

† Sect. 1. By 39 Eliz. c. 17. s. 3. it is enacted, "That every <sup>Wandering soldiers and mariners shall have testimonials.</sup> idle and wandering soldier or mariner which coming from his captain from the seas, or from beyond the seas, shall not have a testimonial under the hand of some one justice of the peace, of or near the place where he landed, setting down therein the place and time when and where he landed, and the place of his dwelling or birth, unto which he is to pass, and a convenient time therein limited for his passage, or having such testimonial shall wilfully exceed the time therein limited, above fourteen <sup>It shall be felony to counterfeit a testimonial.</sup> days: and also as well every such idle and wandering soldier or mariner as every other idle person wandering as soldier or mariner, which shall at any time hereafter *forge or counterfeit* any such testimonial, or have with him or them any such testimonial forged or counterfeited as aforesaid, knowing the same to be counterfeited or forged; in all these cases every such act or acts to be felony, and the offenders to suffer as aforesaid, without any benefit of clergy."

† Sect. 2. By 39 Eliz. c. 17. s. 4. it is further enacted, "That <sup>Justices of assize</sup> it

and gaol-delivery and peace may hear and determine these offences.

Taking the offender into service for a year.

“ it shall be lawful for the justices of assizes, justices of gaol-delivery, and the justices of peace of every county, and for all justices of peace in towns corporate, having authority to hear and determine felonies, to hear and determine all such offences in their general sessions, and to execute the offenders which shall be convicted before them, as in cases of felony is accustomed; except some honest person valued at the last subsidy next before the time to ten pounds in goods, or forty shillings in lands, or else some honest freeholder, as by the said justices shall be allowed, will be contented before such justices, as such person shall be arraigned of felony, to take him or them into his service for one whole year, then next following, and then before the said justices will be bound by recognizance of ten pounds, to be levied of his lands, goods, tenements, and chattels, to the use of our sovereign lady the queen, if he keep not the said person or persons for one whole year, and bring him to the next sessions for the peace and gaol-delivery next ensuing after the said year; and if any such person retained depart within the year, without the licence of him that so retained him, then to be indicted, tried and adjudged as a felon, and not to have the benefit of his clergy.”

This severe law, though it remains unrepealed upon the statute book, has long been obsolete. And by st. 43 Geo. 1. c. 61. it is enacted, “ That every soldier or marine duly discharged out of his majesty’s service, or out of any ship of the royal navy, carrying his discharge within three days to the chief magistrate of the nearest town to the place where he was discharged, shall receive from such magistrate a certificate stating the place to which he is desirous of going, being his home, or place of legal settlement, limiting the time according to distance; upon the production of which certificate he shall not be deemed a vagabond for asking alms or relief on the road.”

## 6. *Official Documents.*

### *Memorial of Deeds or Wills of Land.*

By 2 and 3 Anne, c. 4. entitled, “ An act for the public registering of all deeds, conveyances, and wills, of any honors, manors, lands, tenements, hereditaments, within the west riding of the county of York, after the 29th September, 1704,” it is directed that a memorial of all such shall be registered in a certain manner at Wakefield, and that the registrar shall indorse a certificate of such registry on every such deed, &c.; and by s. 19. it is enacted, “ That if any person or persons shall at any time forge or counterfeit any such memorial or certificate, and be thereof lawfully convicted, such person or persons shall incur and be liable to such pains and penalties as by 5 Eliz. c. 14. are imposed upon persons for forging or publishing of false deeds, charters, or writings sealed, court rolls, or wills, whereby the freehold or inheritance of any person or persons of, in, or to any lands, tenements, or hereditaments, shall or may be molested, troubled, or charged.”

The st. 5 Anne, c. 18. directs that all bargains and sales of any

any manors, lands, tenements, and hereditaments, within the west riding of the county of York, shall be registered at Wakefield, and indorsed by the registrar; that the inrolment of every such deed shall be deemed a memorial pursuant to 2 and 3 Anne, c. 4.; and by s. 4. no judgment, statute, or recognizance shall bind any manors, lands, &c. but only from the time a memorial thereof shall be registered in the office; then s. 8 subjects to the same punishment as the statutes 2 and 3 Anne, c. 4. any person\* or persons who shall forge or counterfeit any entry of the acknowledgment, of any bargainer in any such bargain and sale as aforesaid, or any such memorial, certificate, or indorsement, as are therein mentioned or directed, being thereof lawfully convicted.

The st. 8 Geo. 2. c. 6. s. 31. extends the provisions of both statutes to the north riding of the same county.

The st. 7 Anne, c. 20. directs the like registry of deeds, conveyances, wills, and other incumbrances, affecting honors, manors, lands, tenements, or hereditaments, in Middlesex, as in 2 and 3 Anne, c. 4.; and directs certificates to be indorsed on such memorials, and on the deeds, &c. registered; and then by s. 15. enacts, "That if any person or persons shall at any time "forge or counterfeit any entry of the acknowledgment of any "such memorial, certificate, or indorsement, and be thereof lawfully convicted, such person or persons shall incur and be liable "to such pains and penalties as by 5 Eliz. c. 14. are imposed on "persons forging and publishing false deeds, &c. whereby the "freehold or inheritance of any person of, in, or to any lands, "tenements, or hereditaments shall or may be molested, troubled, "or charged."

*Documents relating to Suitors in the Court of Chancery.*

† Sect. 18. By 12 Geo. 1. c. 52. s. 9. it is enacted, "That "if any person or persons shall forge or counterfeit, or procure "to be forged or counterfeited, or willingly act or assist in the "forging or counterfeiting the name or hand of the said accountant-general, the said register, the said clerk of the report office, or any of the cashiers of the said governor and company "of the bank of *England*, to any certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument or writing whatsoever, for or in order to the "receiving or obtaining any the money or effects of any of the "suitors of the said court of chancery, or shall forge or counterfeit, or procure to be forged or counterfeited, or wilfully act or "assist in forging or counterfeiting any certificate, report, entry, "indorsement, declaration of trust, note, direction, authority, instrument or writing in form of a certificate, report, entry, "indorsement, declaration of trust, note, direction, authority, instrument or writing, made by such accountant-general, "register, clerk of the report-office, or any of the cashiers of the "said governor and company of the bank of *England*, or any "bond or obligation under the common seal of the united "company of merchants of *England* trading to the *East Indies*, "or any indorsement or assignment thereon, or on any bond or "obligation under the common seal of the governor and company

Forging the hand of the accountant to a certificate to receive suitors' effects in the bank, or any *East India* or *South Sea* bond, is felony without benefit of clergy.

“pany of merchants of *Great Britain* trading to the *South Seas* and other parts of *America*, and for encouraging the fishery; or shall utter or publish any such, knowing the same to be forged or counterfeited, with intention to defraud any person whatsoever; then every such person and persons so offending (being thereof lawfully convicted) shall be and is hereby declared and adjudged to be guilty of felony, and shall suffer death as in case of felony, without benefit of clergy.”

Gibson's case,  
Cases C. L. 53.

† *Sect. 19.* It hath been decided, that forging an *office copy* of the accountant-general's certificate, is within the penalty of the above statute.

### *Receiver of Prefines.*

By 32 Geo. 2. c. 14. which directs the receiver of the pre-fines at the alienation-office to receive the post-fine at the same time on every writ of covenant sued out for the passing of fines in C. B., and to indorse the receipt of the same thereon with his name and mark of office, it is enacted (s. 9.), “If any person or persons, after the first day of Trinity Term, 1759, shall make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, the mark or hand of such receiver as aforesaid, whereby such receiver, or any other person or persons, shall or may be defrauded or suffer any loss thereby, every person or persons convicted of such offence shall be deemed guilty of felony, without benefit of clergy.” This is again re-enacted by 52 Geo. 3. c. 143. s. 5.

### *Certificates of Births, Marriages, &c.*

By sect. 52 Geo. 3. c. 146. for better regulating and preserving parish and other registers of births, baptisms, marriages, and burials in England, it is enacted, s. 14. “That if any person shall knowingly or artfully insert, or cause or permit to be inserted, in any such register book of such baptisms, burials, or marriages as aforesaid, or in any such copy of any such register so directed to be transmitted to the registrars as aforesaid, or in any such lists or declarations also directed to be transmitted to such registrars as aforesaid, any false entry of any matter or thing relating to any baptism, burial, or marriage, or shall falsely make, alter, forge, or counterfeit, or cause or procure, or artfully permit to be falsely made, &c. any part of any such register, list, or declaration, or of any such copy of any such register; or shall wilfully destroy, deface, or injure, or cause, or procure, or permit, to be destroyed, &c. any such register book, or any part thereof; or shall knowingly and wilfully sign or certify any copy of any such register hereby required to be transmitted as aforesaid, which shall be false in any part thereof, knowing the same to be false; every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of felony, and shall be transported for the term of fourteen years.”

### *Mediterranean Passes.*

By existing treaties between this country and the Barbary States, British vessels producing a pass in a certain form are to pass

pass into the Mediterranean free from molestation by these corsairs; with reference to these treaties the 4 Geo. 2. c. 28. enacts, "That if any person or persons shall within Great Britain or Ireland, or any other his majesty's dominions, or without, falsely make, forge, or counterfeit, or cause or procure, &c. or wittingly or knowingly act or assist in the false making, &c. any pass or passes for any ships whatsoever, commonly called a Mediterranean pass or passes, or shall counterfeit the seal of the said office (i. e. the lord high admiral), or the hand or hands of the lord high admiral of Great Britain and Ireland, or any commissioner or commissioners for executing the said office to any such pass or passes, or shall alter or erase any true or authentic pass or passes issued or made out by the lord high admiral, &c. or the commissioner, &c. or shall utter or publish as true any such false, forged, counterfeited, altered, or erased pass or passes, knowing the same to be false, &c. or erased, every such person or persons, being duly convicted of any of the offences aforesaid in any proper court of Great Britain, or any part of his majesty's plantations beyond the seas, where such offence shall be committed respectively, shall be adjudged guilty of felony without benefit of clergy."

By s. 2. such offences "committed in any country or place out of Great Britain, either within or without the dominions of his majesty, his heirs, &c. shall and may be inquired of, tried, &c. and adjudged in any shire or county of Great Britain, by virtue of the king's commission of oyer and terminer and gaol delivery, or before any court of judicature in Scotland."

*Franks of Letters, &c.*

By 24 Geo. 3. st. 2. c. 37. s. 9. "If any person whatsoever shall (after the end of the then session of parliament) forge or counterfeit the handwriting of any person whatsoever, in the superscription of any letter or packet to be sent by the post, in order to avoid the payment of the duty of postage, or shall forge, counterfeit, or alter, or shall procure to be forged, counterfeited, or altered, the date upon the superscription of any such letter or packet, or shall write and send by the post, or shall cause to be written and sent by the post, any letter or packet, the superscription or cover whereof shall be forged or counterfeited, or the date upon such superscription or cover altered in order to avoid the payment of the duty of postage, knowing the same to be forged, counterfeited, or altered; every person so offending, and being thereof convicted in due form of law, shall be deemed guilty of felony, and shall be transported for seven years."

The last act, altering the rates of postage, 41 Geo. 3. st. 2. c. 7. s. 11. incorporates all former general provisions, and the above clause is repeated verbatim in the act 42 Geo. 3. c. 53. s. 14.

The st. 54 Geo. 3. c. 169. making regulations respecting the postage of ship letters, and of letters in Great Britain, enacts (s. 14.), "That if any person shall forge or counterfeit, or cause

“ to be forged or counterfeited, any stamp, mark of postage or designation, upon any letter hereby authorised to be so marked, stamped, or designated, with intent to avoid the payment of the rate of postage hereby imposed, each and every person and persons so offending shall be deemed and taken to be guilty of a misdemeanor, to be punished by fine and imprisonment; and such offence, if committed within Great Britain, shall and may be inquired of, tried, and adjudged, either within the city of London, or where the offence shall be committed.”

*Documents relative to Seamen's Wages.*

By st. 31 Geo. 2. c. 10. s. 24. “ Whosoever wilfully and knowingly shall personate or falsely assume the name or character of, or procure any other to personate or falsely to assume the name or character of any officer, seaman, or other person entitled, or supposed to be entitled, to any wages, pay, or other allowances of money, or prize money, for service done on board of any ship or vessel of his majesty, his heirs, &c.; or the executor or administrator, wife, relation, or creditor, of any such officer or seaman, or other person, in order to receive any wages, pay, or other allowances of money, or prize money, due or supposed to be due or payable, for or on account of the services of any such officer or seaman or other person, as aforesaid; or shall forge or counterfeit, or procure to be forged, &c. any letter of attorney, bill, ticket, certificate, assignment, last will, or any other power or authority whatsoever, in order to receive any such wages, &c. due or supposed to be due to any such officer, &c.,” or by st. 9 Geo. 3. c. 30. s. 6. “ If any person shall utter or publish, as true, any false, forged, or counterfeited letter of attorney, bill, &c. (as before) in order to receive any wages, &c. due or supposed to be due to any officer or seaman or other person, who has really served or was supposed to have served, or who shall hereafter serve or be supposed to have served on board of any ship or vessel of his majesty, his heirs, &c. with intent to defraud any person (knowing the same to be false, forged, or counterfeited); every such person so offending, being lawfully convicted of any such offence or offences, shall be deemed guilty of felony without benefit of clergy.” Most of these offences were before subjected to a penalty of 200*l.* and imprisonment till payment, by st. 9 and 10 Will. 3. c. 41. s. 3.

By s. 5. of the last mentioned act, the treasurer, comptroller, surveyor, clerk of the acts, or any commissioner of the navy, may act as justices of the peace in causing the offenders to be apprehended.

By st. 32 Geo. 3. c. 33. s. 23. “ If any person after 1st August, 1792, shall falsely make, forge, or counterfeit, or cause, &c. or willingly act and assist in the false making, &c. any ticket for the wages or pay due to any petty officer or seaman, non-commissioned officer of marines, or marine, for his service on board any ship or vessel of his majesty, his heirs, &c. or any duplicate of any such ticket, or any certificate of discharge from any naval hospital of his majesty, his heirs, &c. or any remittance  
“ bill,

“ bill, or duplicate of remittance bill ; with intention to receive  
 “ any wages, money, or other allowances of money, or prize money,  
 “ due or supposed to be due for or on account of the service of any  
 “ petty officer or seaman, non-commissioned officer of marines,  
 “ or marine, on board any ship or vessel of his majesty, his heirs,  
 “ &c. or shall utter or publish as true, any ticket for the wages or  
 “ pay due to any petty officer or seaman, non-commissioned officer  
 “ of marines, or marine, for his service on board any ship or vessel  
 “ of his majesty, his heirs, &c. or any duplicate of any such ticket,  
 “ or any certificate of discharge from any naval hospital of his ma-  
 “ jesty, his heirs, &c. or any remittance bill, or duplicate of re-  
 “ mittance bill ; with intention to receive any wages, pay, or  
 “ other allowance of money, or prize money due or supposed to  
 “ be due for or on account of the service of any petty officer or  
 “ seaman, non-commissioned officer of marines, or marine, on  
 “ board any ship of his majesty, his heirs, &c. knowing the same  
 “ to be false, forged, or counterfeited, then any such person so  
 “ offending, being lawfully convicted of any such offence or offences,  
 “ shall be deemed guilty of felony without benefit of clergy.”

By st. 24. it is declared that so much of the st. 31 Geo. 2. c. 10. as is not repealed by this act, shall remain in force.

By st. 26 Geo. 3. c. 63. and 32 Geo. 3. c. 34. for the better protection of seamen and marines from the frauds practised on them, certain regulations are directed to be observed in the forms of their letters of attorney, without which they are not to be valid. They must be made revocable; and if made in actual service must be attested by the officer commanding the ship, or by certain other persons; if made on shore, the latter statute directs, that no letter of attorney, made by any petty officer, seaman, non-commissioned officer of marines, or marine, who shall have been discharged from the service, and who shall be within seven miles of a port where seamen's wages are paid, shall be valid, unless it be signed before and attested by a clerk of the treasurer of the navy of such port, or by the inspector of seamen's wills and powers of attorney. It also gives a form of certificate of discharge, which the party must produce or his person be identified before he can receive his wages, &c. or before his letter of attorney can be passed. And various other forms are prescribed for different methods of paying these persons; and then by s. 29. (32 Geo. 3. c. 34.) it is enacted, “ If any person, after  
 “ the 1st of August, 1792, shall falsely make, forge, or counter-  
 “ feit, or cause or procure to be falsely made, &c. or willingly act  
 “ in the false making, &c. any petition for a certificate therein  
 “ before described or contained, to enable any person or persons  
 “ to obtain letters of administration to any petty officer or sea-  
 “ man, non-commissioned officer, or private of marines, who shall  
 “ have served on board any ship or vessel of his majesty, his  
 “ heirs, &c. or shall utter or publish as true, any petition, &c. or  
 “ shall falsely make, forge, or counterfeit, or cause or procure to  
 “ be falsely made, &c. or shall willingly act and assist in the false  
 “ making, &c. any certificate for enabling him, her, or them to ob-  
 “ tain probate, or letters of administration with the will annexed ;  
 “ or any check, remittance bill, or duplicate of remittance bill,  
 “ or



"or any certificate to the deputy paymaster, in respect of wages, prize money, not exceeding ten pounds, herein before severally described or mentioned, in order to receive any wages, pay, or other allowances of money, or prize money, due or supposed to be due for or on account of the service of any petty officer, or seaman, non-commissioned officer, or private of marines, on board any ship or vessel of his majesty, his heirs, &c. or shall utter or publish as true, any such check, &c. in order to receive any wages, &c. due or supposed to be due for or on account of the service of any petty officer, &c. on board, &c. knowing the same to be false, forged, or counterfeited; then every such person, being lawfully convicted of any such offence or offences, shall be deemed guilty of felony without benefit of clergy."

See post,  
55 Geo. 3. c. 60.

By sect. 30. any petty officer, seaman, non-commissioned officer or private of marines, receiving his pay, or attempting to receive it, by any counterfeit certificate, service or discharge, or himself assisting in any forgery of such certificate, and being thereof convicted, shall be punished as in cases of perjury."

Petty officers, &c. receiving or attempting to receive pay on forged certificates, &c. to be punished as in cases of perjury.

By stat. 55 Geo. 3. c. 60. s. 29. IT IS ENACTED, "that if any petty officer or seaman, non-commissioned officer of marines, or marine, shall receive his pay, or shall attempt to receive the same, or any part thereof, upon any certificate purporting to be a certificate of servitude, or a certificate of discharge, knowing the same to be forged or counterfeited; or if any such petty officer, or seaman, non-commissioned officer of marines, or marine, or any other person, shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly act or assist in the false making, forging, or counterfeiting of any such certificate; every such petty officer or seaman, non-commissioned officer of marines, or marine, or other person, being thereof lawfully convicted, shall be punished as in cases of wilful and corrupt perjury."

Signing petition to the treasurer of Navy, falsely representing the situation of party in order to procure certificate—to procure letters of administration to seamen, &c. to be transported for 7 years.

By s. 30. if any person shall sign or subscribe any petition or application to the treasurer or paymaster of his majesty's navy for the time being, falsely and wilfully representing herself or himself, to be the widow, or the nearest or one of the nearest of kindred of any deceased petty officer or seaman, non-commissioned officer of marines, or marine, who shall have belonged to or served on board any of his majesty's ships or vessels, or utter or publish any such petition or application so signed or subscribed as aforesaid, containing such false and wilful representation as aforesaid, in order to obtain a certificate from the inspector of seamen's wills and powers, to procure letters of administration to the effects of any such petty officer, or seaman, non-commissioned officer of marines, or marine; or procure payment of any wages, pay, prize money, bounty money, or other allowances of money under twenty pounds, for or in respect of services on board any ship or vessel of his majesty, his heirs or successors; or if any person or persons shall demand or receive any wages, pay, prize money, bounty money, or other allowance of money due or supposed to be due, for or in respect of the services of any such petty officer or seaman, non-commissioned officer

officer of marines, or marine, upon or by virtue of any certificate from the said inspector of seamen's wills, knowing such certificate to have been obtained by false representation or pretences; every such person shall, on being convicted of any such offence in due form of law, be transported beyond the seas for the term of seven years, in like manner as persons convicted of felony are directed to be transported by the laws and statutes of this realm.

Sect. 31. If any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly act and assist in the false making, forging, or counterfeiting the signatures of any minister or householder of any parish, to any certificate annexed or subjoined to or contained in any check or petition for a certificate as required, described, and mentioned in this act, to enable any person or persons to obtain probate of any will or letters of administration to any such petty officer or seaman, non-commissioned officer of marines, or marine; or shall utter, or publish as true, any such certificate annexed or subjoined to or contained in any such check or petition, with any false, forged, or counterfeited signature of any such minister or householder of any parish subscribed thereto, knowing the same signature to be false, forged, or counterfeited, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever, then every such person so offending, and being thereof convicted by due course of law, shall be deemed guilty of felony, and shall be transported as a felon, for the term of his or their natural life, or for the term of fourteen years or seven years, as the court, before which such offender or offenders shall be tried, shall adjudge.

Forging signature of minister, householder, &c. to obtain probate, &c. a felony, offender to be transported.

Sect. 32. If any person or persons shall, willingly or knowingly, falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, forged, counterfeited, or altered, or willingly act or assist in the false making, forging, counterfeiting, or altering any letter of attorney, bill, ticket, or certificate purporting to be a certificate from the inspector of seamen's wills and powers, or his assistant, assignment, last will, or other power or authority whatsoever, in order to receive, or to enable any other person to receive, any wages, pay, prize money, bounty money, or other allowances of money, due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person as aforesaid, performed or supposed to have been performed on board of any ship or vessel of his majesty, his heirs or successors, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; or shall utter or publish as true, any false, forged, counterfeited, or altered letter of attorney, bill, ticket, certificate, purporting to be a certificate from the inspector of seamen's wills and powers, or his assistant, assignment, last will, or other power or authority whatsoever, in order to receive any wages, pay, prize money, bounty money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person as aforesaid, performed or supposed to have been performed on board of any ship or vessel of his majesty, his heirs or successors, with

Forging, &c. letter of attorney, bill, ticket, &c. to receive pay or prize money, felony without benefit of clergy.

with intention to defraud any person or persons, body or bodies politic or corporate whatsoever, knowing the same to be false, forged, counterfeited, or altered; or shall willingly and knowingly take a false oath, or cause or procure any other person to take a false oath, to obtain the probate of any will or wills, or to obtain letters of administration, in order to receive, or to enable any other person to receive, any wages, pay, prize money, bounty money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person as aforesaid, performed or supposed to have been performed on board of any ship or vessel of his majesty, his heirs or successors; or shall demand or receive any wages, pay, prize money, bounty money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person as aforesaid, performed or supposed to have been performed on board of any of his majesty's ships or vessels, upon or by virtue of any probate of any will or letters of administration, knowing the will, on which such probate shall have been obtained, to be false, forged, and counterfeited, or knowing the probate of such will or such letters of administration as last aforesaid to have been obtained by means of any such false oath as aforesaid, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; then every such person or persons so offending, and being thereof convicted according to due course of law, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy.

By 57 Geo. 3. c. 127. certain allowances are directed to be paid out of the *droits d'Admiralté* to Greenwich Hospital, and it is, by s. 4., made felony without benefit of clergy, to personate any person entitled to part of such allowance, or to forge any power of attorney or certificate to enable the party to receive the same.

The muster books of the King's ships, documented in the navy office, to which returns are regularly made by the several commanders, of the names, &c. of their respective crews, are admitted as evidence of the persons therein named having served on board the several ships, in the capacities therein mentioned. (*R. v. Rhodes*, 1 Leach, 23—*R. v. Fitzgerald*, ib. 20.)

#### *Certificates of Naval Stores.*

By st. 39, 40 Geo. 3. c. 89. s. 25. reciting that "the commissioners of the navy, ordnance and victuals, may sell certain stores, which are to be accompanied by a certificate, under their hands and seals;" by sect. 26, ENACTS, "if any person or persons shall make, sign, or give any false certificate or other instrument, purporting the identity or the sale or disposal of any goods or stores, as goods or stores so purchased of the said commissioners, as aforesaid; or if any person shall utter or publish any such certificate, &c. purporting as aforesaid, knowing the same to be false: every such offender, upon conviction, shall forfeit £200, and be further corporally punished by pillory, whipping or imprisonment, or by any or either of the said ways, in such manner and for such space of time as the judge or justices, before

"fore whom such offender shall be convicted, shall seem meet,  
 "with a power in the judge to mitigate the penalty, one moiety  
 "of which is to go to the king, and the other moiety with full  
 "costs, to the informer."

*Land Tax Contracts.*

By st. 42 Geo. 2. c. 116. which consolidates the former acts, *Land Tax.*  
 relating to the redemption of the land tax, and by 52 Geo. 3.  
 c. 143. it is made felony, without benefit of clergy, "to forge,  
 counterfeit or alter, or cause or procure to be forged, &c. or  
 knowingly act or assist in the forging, &c. any contract, assign-  
 ment, certificate, receipt or attested copy of certificate made out  
 or purporting to be made out by any person or persons autho-  
 rised to make out the same by any act of parliament, touching the  
 redemption or sale of the land tax, or of any part thereof, or to  
 utter the same knowing it to be forged, with intent to defraud  
 his majesty, &c. or other persons."

*Legacy Duty Receipts.*

By st. 36 Geo. 3. c. 52. for granting duties on legacies and *Legacies.*  
 shares of personal estates, which directs the commissioners of  
 stamps to receive the same, and to give papers adapted for re-  
 cepts or discharges to the parties applying upon payment of the  
 duties, and that no legacies liable to the duties shall be paid  
 without such a receipt containing certain particulars, and the  
 amount of the duties payable therein under certain penalties;  
 and that no receipt for any legacy shall be available in evidence  
 unless duly stamped; enacts, s. 39. "That if any person shall  
 "alter any word, letter, figure, or number, in any assessment or  
 "receipt to be made or given in pursuance of this act for any of  
 "the said duties after the same shall have been signed by the  
 "officer appointed to sign the same, according to the direction of  
 "this act; or shall utter or publish as true, any such altered as-  
 "sessment or receipt with intent to defraud his majesty, his  
 "heirs, &c. or any other person or persons, every person so al-  
 "tering or publishing as aforesaid shall forfeit 500*l*."

Sect. 40. enacts, "that if any person shall counterfeit or  
 "forge, or procure to be counterfeited or forged any stamp  
 "directed or allowed to be used, or provided, made or used in  
 "pursuance of this act, or shall counterfeit or resemble the im-  
 pression of the same upon any vellum, parchment or paper  
 with intention to defraud his majesty, his heirs, &c. or shall  
 utter, vend or expose to sale any vellum, parchment or paper,  
 liable to the said duty, with such counterfeit impression thereon  
 knowing the same to be counterfeited; or shall privately and  
 fraudulently use any stamp directed or allowed to be used by  
 "this act with intent to defraud his majesty, his heirs, &c.; every  
 "person so offending and being thereof lawfully convicted, shall  
 "be adjudged a felon without benefit of clergy."

For quarantine orders in council, vide, *post*, Offences against  
 Trade.

Exchequer bills and lottery tickets are provided for by respective  
 acts, under the authority of which they are issued, and it has hi-  
 therto been usual to make the forgery of them a capital offence.

It

It is also made felony without benefit of clergy, to forge the handwriting of the following public officers, with a fraudulent intent.

Treasurer, comptroller, surveyor, clerk of the acts, or of the commissioners of the navy.—1 Geo. 1. st. 2. c. 25.

The treasurer of the ordnance, by st. 46 Geo. 3. c. 45.

The receiver general of the excise for the time being, or of the comptroller of the cash of the excise, by st. 46 Geo. 3. c. 75. s. 8.

Receiver general of the stamp duties for the time being, or of his clerk, or of either of the commissioners of stamps, 46 Geo. 3. c. 76. s. 9.

Receiver general of the post office for the time being, or his clerk, by st. 46 Geo. 2. c. 83. s. 9.

Surveyor general of the woods and forests for the time being, or his deputy, by stat. 46 Geo. 3. c. 142. s. 14.

Receiver general of the customs for the time being, or of the supervisor of the receiver-generals, receipts and payments, by st. 46 Geo. 3. c. 150. s. 10.

#### 6. *Private Papers, Securities and Documents.*

##### *Charters, Writings sealed, Court Rolls, Will relative to Land, &c.*

Of forgery by  
5 Eliz. c. 14.

See Poulton, 45,  
46.

Rex v. Marriot,  
2 Show. 6.

By 5 Eliz. c. 14. it is ENACTED, "That if any person or persons upon his or their own head and imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly, and falsely forge or make, or subtilly cause, or wittingly assent to be forged or made, any false deed, charter, or writing sealed, court roll, or the will of any person or persons in writing, to the intent that the state or freehold of inheritance of any person or persons of, in, or to any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest, of any person or persons, of, in, or to the same, or any of them, shall, or may be molested, troubled, defeated, recovered or charged; or shall pronounce, publish, or shew forth in evidence any such false and forged deed, charter, writing, court-roll, or will, as true, knowing the same as false and forged, as is aforesaid, to the intent above remembered (except, being an attorney, lawyer, or counsellor, he shall for his client plead, shew forth, or give in evidence such false and forged deed, &c. to the forging whereof he was not party nor privy), and shall be thereof convicted either upon action or actions of forgery or false deeds, to be founded upon the said statute, at the suit of the party grieved, or otherwise according to the order and due course of the laws of this realm, &c. shall pay unto the party grieved his double costs and damages to be found or assessed in that court where such conviction shall be, and also shall be set upon the pillory in some open market town, or other open place, and there have both his ears cut off, and also his nostrils slit and cut, and seared with a hot iron, &c. and shall forfeit to the king the whole issues and profits of his lands and tenements, and suffer perpetual imprisonment, &c."

*Sect.*

**Sect. 13.** And, by 5 Eliz. c. 14. s. 3. it is further ENACTED, That if any person or persons, upon his or their own head or imagination, or by false conspiracy or fraud had with any other, shall wittingly, subtilly, and falsely forge or make, or wittingly, subtilly, and falsely cause or assent to be made and forged, any false charter, deed, or writing, to the intent that any person or persons shall, or may have, or claim any estate or interest for a term of years, of, in, or to any manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee simple, fee tail, or for term of life, lives, or years, or shall, as is aforesaid, forge, make, or cause, or assent to be made or forged, any obligation, or bill obligatory, or any acquittance, release, or other discharge of any debt, account, action, suit, demand, or other thing personal; or shall pronounce, publish, or give in evidence (except as before excepted), any such false or forged charter, deed, writing, obligation, bill obligatory, acquittance, release, or discharge, as true, knowing the same to be false and forged, and shall be thereof convicted by any of the ways and means aforesaid, he shall pay unto the party grieved his double costs and damages, to be found and assessed in such court, where the said conviction shall be had, and shall be also set upon the pillory in some open market town, or other open place, and there have one of his ears cut off, and also shall suffer imprisonment for one year, &c.” Lutw. 190.

**Sect. 14.** By 5 Eliz. c. 14. s. 7 and 8. it is further ENACTED, that if any person or persons being convicted or condemned of any of the offences aforesaid, by any of the ways and means above limited, shall after any such his or their conviction or condemnation, afterwards commit or perpetrate any of the said offences in form aforesaid, that then every such second offence shall be adjudged felony without benefit of clergy, saving to all persons other than the said offenders, and such as claim to their uses, all such rights, &c. which they shall have to any the hereditaments of any such person, so as is aforesaid convicted or attainted, at any time before, &c. saving also the dower of such offender's wife, and the right of his heirs.” A second offence felony without clergy.

**Sect. 15.** By 5 Eliz. c. 14. s. 10. “All justices of *oyer and terminer*, and justices of assize, shall have power to inquire of, hear, and determine the offences aforesaid.”

**Sect. 16.** But by 5 Eliz. c. 14. s. 9. 12. and 16. it is provided, That this act, or any thing therein contained, shall not extend to any ordinary or his commissary, &c. for putting their seal of office to any will to be exhibited unto them, not knowing the same to be false or forged, or for writing of the said will or probate of the same, nor to any proctor, &c. of any ecclesiastical court, for the writing, setting forth, or pleading of any proxy made according to the ecclesiastical law, &c. for the appearance of any person being cited to appear in such court; nor to any archdeacon, or official, for putting their authentic seal to the said proxy or proxies, nor to any ecclesiastical judge for admitting the same; nor to any person who shall plead or shew forth any deed or writing exemplified under the great seal of England, or under the seal of any other authentic court of this “realm;

" realm ; nor to any person who shall cause any seal of any court  
 " to be set to any such deed, charter, or writing enrolled, not  
 " knowing the same to be false or forged."

1 Hale, 682.

In the construction of this statute the following points have been holden :

Dyer, 322.  
 3 Leon. 108.

*Sect. 17. FIRST,* That a false customary of a copyhold manor, made in parchment under the seals of several tenants of the manor, and containing in it divers false customs, apparently to the disherison of the lord, and falsely pretending by its title to be set forth by the consent of all the tenants, and allowance of the lord; is within the first branch of forgery mentioned in the statute, as being a sealed writing made to the intent to molest the inheritance of the lord.

3 Inst. 17.  
 Noy, 42.

*Sect. 18. SECONDLY,* That the forgery of a lease for years, or of a grant of a rent charge for years, in the name of one who is seised of a freehold or inheritance, is also within the said first branch of the statute, because the said branch is penned in general words extending to any molestation whatsoever of such estate, without mentioning any estate or interest, in the claim whereof such molestation shall consist ; and from this ground it follows, that those words in the second branch of forgery mentioned in the statute, " to the intent that any person shall claim " any estate or interest for term of years, &c." are meant only of such forgeries which relate to such an estate or interest *in esse* before.

Dyer, 302.

*Sect. 19. THIRDLY,* That the forgery of a will in writing of one possessed of such an estate, mentioning a bequest thereof, is within the said second branch of the statute, as being a false writing, made to the intent that some person may claim an estate for years, notwithstanding the said branch makes no express mention of a will, as the first doth.

3 Leon. 170.

*Sect. 20. FOURTHLY,* That the forgery of a lease of lands in *Ireland* is not within either of the branches of the statute.

3 Leon. 170.

*Sect. 21. FIFTHLY,* That the forgery of a deed containing a gift of mere personal chattels, is also no way within the statute, the words whereof to this purpose are, " If any person shall forge " any obligation or bill obligatory, or any acquittance, release, or " other discharge of any debt, action, suit, demand, or other thing " personal."

1 Freeman, 398.  
 15 H. 7. 15.  
 2 R. Abr. 466.  
 Con. 3 Inst. 171.

*Sect. 22. SIXTHLY,* That the forgery of a statute-merchant or of a recognizance in the nature of statute-staple, by acknowledging them in the nature of another, are within the statute, as being obligations, because they must have the seal of the party, by the express words of the statutes, which appoint in what manner such statute or recognizance shall be taken: but that the forgery of the statute-staple is no way within the statute, because it needeth not the seal of the party, but only the seal of the staple provided for it.

3 Inst. 171.  
 1 Hale, 685.

*Sect. 23. SEVENTHLY,* That he who is truly informed by another that a deed is forged, is in danger of the statute if he afterwards publish

publish the same to be true, notwithstanding the words of the statute be, "If any one shall publish, &c. such false and forged deed, &c. knowing the same to be false or forged."

*Sect. 24. EIGHTHLY,* That the double-damages to be awarded <sup>3 Inst. 172.</sup> to the party grieved by a forged release of an obligation, &c. shall be governed by the penalty, and not by the true debt appearing in the condition.

*Sect. 25. NINTHLY,* That one who hath been convicted of publishing a forged deed, may become guilty of felony by forging another deed afterwards, as well as by publishing any such deed, notwithstanding the second offence be not of the very same nature with the first; for the words of the statute are, "If any person being convicted or condemned of any of the offences aforesaid, &c. shall after any conviction or condemnation, <sup>3 Inst. 172.</sup> afoons commit any of the said offences."

*Sect. 26. TENTHLY,* That notwithstanding it be necessary in every prosecution upon the statute strictly to pursue the very words of it (for which cause it hath been resolved, than an indictment setting forth the forgery of a writing indented, without adding that it was sealed, is insufficient), yet there is no necessity that the translation of such words be made in proper classical Latin, so that it be intelligible; and upon this ground it hath been adjudged, that an indictment setting forth that the defendant *super caput suum proprium* did forge, &c. meaning thereby to express that he did it of his own head, is sufficient. <sup>11 Modern, 3. Holt, 326. 3 Keb. 356. 367. 3 Inst. 169. See 1 Keb. 849. 2 Keb. 129. Other cases of this kind. 2 Keb. 245. 501. 532. Farresley, 150.</sup>

*Sect. 27. ELEVENTHLY,* That upon an indictment of trespass, forgery, and publication of a deed, a verdict finding the defendant guilty *de transgressionem et forgeria predictis prout superius in indictmento supponitur*, is sufficient, because these words *de transgressionem predict'* include the whole. Also perhaps such a verdict may be sufficient for another reason, because the offence is equally within the statute, and the punishment the very same, whether the party be guilty both of the forgery and publication, or of one of them only. (1) <sup>1 Ven. 23, 24. Salk. 342. 375. 2 Lev. 111. 221. 3 Keble, 353.</sup>

#### *Deeds, Will, Testament, Bond, Bill of Exchange, &c.*

† *Sect 1.* By 2 Geo. 2. c. 25. s. 1. it is enacted, "That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, or forged, or counterfeited, or willingly act or assist in the false making, forging, or counterfeiting any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange, or promissory note for payment of money, or acquittance or receipt, either for money or goods, with intention to defraud any person whatsoever, or shall utter or publish as true, any false, forged, or counterfeited deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange or promissory note" <sup>To forge any deed, &c. felony without benefit of clergy.</sup>

(1) See the case of Japhet Crooke, 2 Str. 902. little importance since the subsequent statutes upon Fitzgibbon, 57. 261. This statute has become of the same subjects.



"note for payment of money, acquittance or receipt, either for money or goods, with intention to defraud any person, knowing the same to be false, forged, or counterfeited; then every such person, being thereof lawfully convicted according to the due course of law, shall be deemed guilty of felony, and suffer death as a felon, without benefit of clergy."

† *Sect. 2.* By 31 Geo. 2. c. 22. s. 78. it is declared, that the punishment inflicted in and by the above statute extends to the commission of the like forgeries with an intention to defraud any corporation.

Persons convicted of forging or altering the acceptance of bills of exchange, &c. shall suffer death as felons,

† *Sect. 3.* By 7 Geo. 2. c. 22. which was made to amend and enlarge the said statute 2 Geo. 2. c. 25. it is further enacted, "That if any person shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly act or assist in the false making, altering, forging, or counterfeiting, any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money, or delivery of goods, with intention to defraud any person whatever, or shall utter or publish as true, any false, altered, forged, or counterfeited acceptance of any bill of exchange, or accountable receipt for any note, bill, or other security for payment of money, or warrant or order for payment of money, or delivery of goods, with intention to defraud any person, knowing the same to be false, altered, forged, or counterfeited; then every such person, being thereof lawfully convicted according to the due course of law, shall be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy."

† *Sect. 4.* By 18 Geo. 3. c. 18. the above statute is extended to such forgeries, when committed with an intention to defraud any corporation.

Persons forging deeds, wills, bonds, bills, notes, indorsements or assignments thereon, or acquittances, accountable receipts or warrants for payment of money and with intent to defraud, &c. ousted of clergy.  
(a) See Securities of Bank, &c.

The same matters are re-enacted by subsequent statutes with enlargements; for by the stat. 45 Geo. 3. c. 89. "to alter and extend the provisions of the laws now in force for the punishment of the forgery of bank notes, bills of exchange, and other securities to every part of Great Britain," recites the statutes 2 Geo. 2. c. 25., 7 Geo. 2. c. 22., 31 Geo. 2. c. 22., (a) 15 Geo. 2. c. 13. and 41 Geo. 3. (U. K.) c. 39. whereby certain provisions were made and enacted for the preventing and punishing the forgery of bank notes, and other notes, bills, and instruments in those acts respectively mentioned; and that it is expedient that such provisions should extend and be in force in every part of Great Britain, with such alterations and amendments thereon as are hereby made; and then enacts (by s. 1.), "That if any person or persons shall, from and after the passing of this act, falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, forged, counterfeited, or altered, or willingly act or assist in the false making, forging, counterfeiting, or altering, any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange or promissory

" promissory note for payment of money, acceptance of any bill of exchange, or any acquittance or receipt either for money or goods, or any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money or delivery of goods, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; or shall offer, dispose of, or put away any false, forged, counterfeited, or altered deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange or promissory note for payment of money, acceptance of any bill of exchange, acquittance or receipt either for money or goods, accountable receipt for any note, bill, or other security for payment of money, warrant or order for payment of money or delivery of goods, with intention to defraud any person or persons, body or bodies politic or corporate, knowing the same to be false, forged, counterfeited, or altered; then every person or persons so offending, and being thereof lawfully convicted according to the due course of law, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy."

Besides the general acts of the 2 and 7 Geo. 2. and 42 Geo. 3. already mentioned, respecting the forgery of bills of exchange and promissory notes, &c. further provision has been made with respect to securities of this nature in the case of bankers using certain printed forms of such securities, or paper of a particular description. The stat. 41 Geo. 3. c. 57. intitled " An act for the better prevention of the forgery of the notes and bills of exchange of persons carrying on the business of bankers," reciting that whereas it is expedient to prevent the crime of forgery in all parts of the United Kingdom of Great Britain and Ireland, it is enacted, " That if any person or persons in any part of the United Kingdom of Great Britain and Ireland, (after the 10th of July, 1801), shall make, or cause or procure to be made, or knowingly aid or assist in the making or using of any frame, mould, or part of any frame or mould, for the making of paper, with the name or firm appearing visible in the substance of the paper, of any person or persons, body corporate, or other banking company or partnership, carrying on the business of bankers, without an authority in writing for that purpose from such person or persons, body corporate, or other banking company or partnership, or from some person or persons duly authorised to give such authority; or shall manufacture, make, vend, expose to sale, publish, or dispose of, or cause or procure to be manufactured, made, vended, or exposed to sale, published, or disposed of, any paper having the name or firm, appearing visible in the substance of the paper, of any person or persons, body corporate, or other banking company or partnership whatsoever, carrying on the business of bankers; or if any person or persons, without such authority, shall by any art, means, mystery, or contrivance, cause, or procure, or shall knowingly aid or assist in causing or procuring, the name or firm of any person or persons, body corporate,

Making any frame, mould, &c. with the name of any firm or banking company visible in the substance of the paper without authority, subject to imprisonment for first offence and transportation for second.

“ corporate, or other banking company or partnership, carrying  
 “ on the business of bankers, to appear visible in the substance  
 “ of the paper whereon the same shall be written or printed;  
 “ every person or persons so offending in any of the cases afore-  
 “ said, and being convicted thereof, shall for the first offence be  
 “ imprisoned for any time not exceeding two years, nor less than  
 “ six months; and for the second offence be transported to any  
 “ of his majesty’s colonies or plantations for seven years.”

Engraving or  
 etching plates of  
 private bankers  
 without autho-  
 rity, the same  
 punishment.

Sect. 2. enacts, “ That if any person or persons, in any part  
 “ of Great Britain and Ireland, (after the 10th of July, 1801,)   
 “ shall engrave, cut, etch, scrape, or by any other means make,  
 “ or shall cause or procure to be engraved, &c. or by any other  
 “ means or device made, or shall knowingly aid or assist in the  
 “ engraving, &c. or by any other means or device making, in or  
 “ upon any plate whatsoever, any bill of exchange, promissory  
 “ note, or other note for the payment of money, or part of any  
 “ bill of exchange, promissory note, or other note for the pay-  
 “ ment of money, purporting to be the bill of exchange, pro-  
 “ missory note, or other note for the payment of money, of any  
 “ person or persons, body corporate, banking company or part-  
 “ nership, carrying on the business of bankers, without an au-  
 “ thority in writing for that purpose from such person or persons,  
 “ body corporate, banking company, or partnership, or some  
 “ person or persons duly authorised to give such authority; or  
 “ shall use any such plate so engraved, cut, etched, scraped, or  
 “ by any other means or device made, or shall use any other  
 “ device for the making or printing any such bill of exchange,  
 “ promissory note, or other note for the payment of money,  
 “ without such authority in writing as aforesaid; or if any per-  
 “ son or persons shall, (after the said 10th of July, 1801,) with-  
 “ out such authority as aforesaid, knowingly have in his, her, or  
 “ their custody any such plate or device, or shall, without such  
 “ authority as aforesaid, knowingly and wilfully publish, dispose  
 “ of, or put away, any such bill of exchange, promissory note, or  
 “ other note for the payment of money, or part of such bill of  
 “ exchange, promissory note, or other note for the payment of  
 “ money; every person so offending in any of the cases afore-  
 “ said, and being convicted thereof, shall for the first offence be  
 “ imprisoned for any time not exceeding two years nor less than  
 “ six months, and for the second offence be transported to any  
 “ of his majesty’s colonies or plantations for the term of seven  
 “ years.”

Sect. 3. enacts, “ That if any person or persons in Great Bri-  
 “ tain and Ireland, (after the 10th July, 1801,) shall engrave, cut,  
 “ or etch, or by any other means or contrivance trace with a hair  
 “ stroke or other mode of delineation, on any plate whatso-  
 “ ever any of the subscriptions subjoined to any bill of exchange,  
 “ promissory note, or other note for the payment of money, of  
 “ any person or persons, body corporate, or other banking com-  
 “ pany, or partnership carrying on the business of bankers, to  
 “ be payable to bearer on demand; or shall have in his, her, or  
 “ their possession any plate with the hair strokes or other deli-  
 “ neation of any subscription traced thereon, subjoined to any  
 “ bill

“ bill of exchange, promissory note, or other note for the payment of money, purporting to be the bill of exchange and promissory note, or other note for the payment of money, of any person or persons, body corporate, or other banking company or partnership, carrying on the business of bankers, and to be payable to the bearer on demand, and shall not be able to prove that such plate came into his, her, or their possession, without his, her, or their knowledge or consent; every person so offending in any of the cases aforesaid, and being convicted thereof, shall for the first offence be imprisoned for any time not exceeding three years, nor less than twelve months; and for the second offence be transported to any of his majesty's colonies or plantations for the term of seven years.”

It appears that the following private instruments and securities are enumerated by the above statutes of 2 Geo. 2. c. 28. 7 Geo. 2. c. 22. and 45 Geo. 3. c. 89. deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for the payment of money, acquittance or receipt for money or goods, acceptance on a bill of exchange, altering the number or sum of any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money, or delivery of goods.

We shall now note some determinations as will ascertain what sort of instruments come within the description in the above-mentioned statutes.

#### *Writing obligatory.*

In Dick's case, who was indicted and convicted for uttering a forged *writing obligatory*, commonly called a Scotch bank note, in this form:—

	Bond accord	Sterling
Five Pounds	Aberdeen, 1st May, 1767.	
No. 157.		

The banking company in Aberdeen is hereby obliged to pay to Js. Brand, or bearer, on demand, at their office here, five pounds sterling, by order of the directors.

W. Brebner,	} Directors.	R. Sunderland,
J. Burnett,		Cashier.

The judges were divided in their opinions, whether it was within the meaning of st. Geo. 2. and whether it were felony to alter in England a note made in Scotland, the statute having excluded Scotland, and the note being payable there. The prisoner was pardoned.

#### *Receipt for Money.*

W. Testich was found guilty of having uttered a forged *receipt for money*, as follows: “ Received the contents above by me, Stephen Withers;” with intent to defraud, &c. On the trial, the account containing the particulars for which the receipt was underwritten was given in evidence. It was objected, and moved in arrest of judgment, that this evidence did not prove the receipt

ceipt as laid in the indictment, that the bill of particulars and receipt was one entire thing, and ought all to have been set out, for that, without the particulars, the words "Received the contents above," did not show whether it was money or any other thing that was received. Judgment was respited; but in Mich. T. 1774, the judges were of opinion that the conviction was proper. The indictment stated it to be a receipt for *money*, and though, by the words "Received the contents above," it did not appear what was received, yet being averred he uttered or forged a receipt for *money*, the bill of particulars was proper evidence to prove that averment. (2 E. P. C. 926.)

William Hunter was indicted for uttering a forged receipt for money, to wit, for the sum of 25*l.* contained in a navy bill, which said forged receipt is as follows, that is to say, "*William Thornton, William Hunter.*" The prisoner was a clerk in the navy office, and the navy bill came, in the course of business, into his hands in order to be forwarded for payment. He wrote the name *Wm. Thornton*, who was the person entitled to receive payment, and which, according to the course of office, was all the receipt necessary. Judgment was arrested, on the ground that it did not appear on the face of the indictment, nor did it appear by averment, that the instrument was a receipt. Buller, J. doubted, considering this to be as much a receipt as the writing a name was an indorsement on a bill of exchange. But to this it was answered, that the writing a name on the back of a bill was a complete indorsement without any thing more, whereas the name alone, as stated in the indictment, was no receipt; though the name coupled together with the navy bill might prove a receipt, but then it ought to be so stated, and the judges referred to an indictment where it was so laid. (Crown Circuit Comp. p. 405. *Hunter's Case*, 2 Leach, C. C. L. 711.)—Judgment was arrested.

James Lyon was indicted for forging a scrip receipt for 2000*l.* 3 per cent. consols, which the indictment charged to be a receipt for money.

The form of the receipt was as follows:

£2000 3 per cent. annuities, 1793.

By virtue of a resolution of the House of Commons, for raising £4,500,000 for the service of the year 1793.

Received of the sum of £144 for the deposit of £10 per cent. on £1440 subscribed by him in pursuance of the above resolution; and upon due payment of the remaining £90 per cent. of the said sum of £1440, the said subscriber or his assigns, by indorsement hereon, will, on exchange for this RECEIPT, become entitled to £2000 joint stock of 3 per cent. annuities, which was consolidated at the bank of England by certain acts, &c., the interest to commence from 5th Jan. 1793, witness my hand this 4th day of April, 1793,

Ent. W. Johnson.

T. Thompson.

31st May.

Received £144 for second payment.

Ent. W. Smart.

T. Thompson.

To this indictment there was a demurrer, and the objection taken was, that there was no name from whom the money was received, and that therefore it was not a receipt for money. After argument the judges held that it was not a receipt for money within the meaning of the stat. 2 Geo. 2. c. 25. It was the duty of the cashier appointed by the bank to fill up the blanks in the printed paper with the subscribers' names, and until that blank was so filled up it did not become an acknowledgment of payment, or in other words a receipt for money; while in such a state it was no more a receipt than if the sum professed to be received were omitted.

† It hath been determined, that the entry of the receipt of money or notes made by a cashier of the bank of *England* in the bank book of a creditor, is an accountable receipt for the payment of money within the statute 7 Geo. 2. c. 22. and that altering the principal sum of any such entry, by prefixing a figure to increase its numeration, is forging a receipt within that statute. Harrison's case,  
Cases C. L. 166.  
Receipt.

It has been decided that tendering false receipts merely as vouchers in the settlement of an account is within the statute 2 Geo. 2. c. 25. (*Thomas's Case*, 2 E. P. C. 934.)

*Warrant or Order for Payment of Money or Delivery of Goods.*

It seems now settled that if the warrant or order mentioned by the statute of 7 Geo. 2. c. 22. do not purport on the face of it, or be shown by proper averment, to be made by one having authority to command the payment of the money, or direct the delivery of the goods, and to be compulsory on the person having possession of the subject matter of it: but only purport to be a request to advance the money or supply the goods on the credit of the party applying, which the other may comply with or not, as he sees proper, is not a warrant or order within the statute. (2 E. P. C. 936.)

† It hath been decided, that an order drawn in the name of an overseer of the poor, by a person who was or pretended to be entitled to parochial relief, on the tradesman who generally furnished the parish with goods, in the following form: "*Mr. Jefferies*, I desire you to let this woman have six yards of "ordinary stuff, a pair of stockings, a shift, &c. and I will see it "all paid for," is not an order for the delivery of goods within the statute 7 Geo. 2. c. 22; for the words "warrant or order," as they stand in the statute, are synonymous and expressive of one and the same idea, and in common parlance import that the person giving such warrant or order hath, or at least claimeth, an interest in the money or goods which are the subject matter of that warrant or order; that he hath, or at least assumeth, a disposing power over such money or goods, and taketh on him to transfer the property, or custody of them at least, to the person in whose favour such warrant or order is made; for though the present case may come within the mischiefs intended to be prevented, yet in the construction of acts so penal as this, the old rule of adhering strictly to the letter must not be departed from. Mary Mitchell's  
case, Foster's  
C. L. 119.

Case of G. Williams, before the twelve judges, Cases C. L. 108.

† So also, to forge an order on a tradesman, in the name of one of his customers, in the following form: "Please to let the bearer, *Captain George Williams*, have twelve barrels of tar, and in so doing you will oblige, yours, &c. *W. R.*" is not an order for the delivery of goods within the meaning of the statute.

Elor's case, Cases C. L. 266.

† And upon the authority of the foregoing cases it has been held, that an order in the following form, "Please to send ten pounds by the bearer, as I am so ill I cannot wait on you," is not an order for the payment of money; for the statute means such an order as, if genuine, the party giving it had a right to make, but this is a mere letter, rather requesting the loan of money than ordering the payment of it.

The case of John Clinch, Cases C. L. 437.

† So also, an order forged by a servant in the name of the son and apprentice of a tradesman, in the following form, "Please to send by the bearer eight pounds of the silk unmarked," and carried to a dyer who had silk belonging to the trader to die, is not an order for the delivery of goods; for, in the first place, it is not directed to the person who had possession of the goods (a); and, in the next, the son and apprentice had no interest, claim of interest in, or a disposing power over the goods, nor any authority whatever to make such an order.

(a) See Jones's case, Cases C. L. 51.

John Jones's case, Cases C. L. 51.  
Order for delivery of goods.

† But where a silversmith had sent two silver cups to *Goldsmiths'-hall* to be stamped, and his servant forged an order on the officer of the goldsmiths' company, in the name of his master, for the re-delivery of them, it was held, that this would have been an order for the delivery of goods within the statute: but as the order was not directed to any person, he was pardoned on condition of transportation.

Lockett's case, Cases C. L. 89.  
Order.

† And where a person went to the shop of a trader, looked out goods, and paid for them by a draft on a banker, in this form, "Messrs. *Fordyce and Co.* Pay to Mr. *W. H.* or bearer, sixteen pounds ten shillings, *R. V.*" out of which he received six pounds ten shillings, it was decided, by the unanimous opinion of the twelve judges, to be an order for the payment of money within the statute 7 Geo. 2. c. 22. although neither the drawer of it, nor any person of his name, ever kept cash at *Fordyce's* banking shop; for the nature of the order assumes, that there was cash there in the name of the drawer, which he hath taken upon him to transfer to the person in whose favour the order was made.

Bills of exchange may be laid as warrants or orders for the payment of money, as in Lockett's case (*supra*), when the judges held that every bill of exchange was an order for the payment of money, though not *vice versâ*. See also Willoughby's Case, 2 E. P. C. 945.

James M'Intosh was convicted of forging and uttering an order for the payment of money in the words and figures following:

Petersfield, 6th Aug. 1779.

Sir, Please to pay on demand to Mr. Hugh Young, or order,  
all

*all my proportion of prize money* due to me for my services on board his majesty's ship *Leander*, for which this shall be your authority. Witness my hand,

John

To Alex. Davison, Esq.  
21, Milbank Street, Westminster.

✕  
Johnson.

Signed before us,

Walter Noble, Minister.

John Williams, }  
Francis Gibbens, } Churchwardens.

This was laid in the indictment both ways, as a bill of exchange and as an order for the payment of money. It was objected that this was not a bill of exchange, nor an order for payment of money, under the stat. 7 Geo. 2. c. 22. because no sum of money was mentioned; and secondly, that the instrument was void, under the st. 32 Geo. 2. c. 34. s. 2. as wanting the formalities requisite to an order for payment of prizemoney. The judges held the conviction proper.

Several cases have decided, that the forgery need not be in the name of an existing person; thus,

† It has been decided, that a forged deed, purporting to be a power of attorney from *A. B.* administratrix of her father *C. D.* a mariner, late belonging to such a ship, empowering *E. F.* to receive from the navy-office the wages due to the deceased, is within the letter and meaning of the statute 2 Geo. 2. c. 25. although it appear that *C. D.* died childless and unmarried, and of course that there could be no such person *in rerum naturâ* as *A. B.* the daughter of *C. D.*

The case of  
*Ann Lewis,*  
*Poster, C. L.*  
116.

† So also, where one *Bolland*, the holder of a note of hand, had indorsed it in his own name, but finding that the badness of his credit prevented him from getting it discounted, erased all the letters except the initial of his name, and added the letters "*anks*," making the name *Banks*, whom he represented to be a wine-merchant living in *Rathbone-place*, but in fact no such person ever existed, it was decided to be a forgery within the statute 7 Geo. 2. c. 22.

*Bolland's case,*  
*O. B. Feb.*  
*Sess. 1772.*  
*Cases C. L. 78.*

† So also, where a person found a real bill of exchange, and, in order to procure the cash for it, indorsed it in a fictitious name, it was held to be a forgery, although no such person as the name forged was known to exist, and although the fictitious signature was not necessary to his obtaining the money.

*Tuft's case,*  
*Cases C. L.*  
159.

*Taylor's case,*  
*Cases C. L. 191.*

† So also it is said, that if a bill of exchange payable to *A.* or order, get into the hands of another person of the same name with the payee, and such person, knowing that he is not the person in whose favour it was drawn, indorse it, he is guilty of a forgery.

*Per Lord*  
*KENYON, in*  
*Mead v. Young,*  
*4 T. Rep. 28.*

† But it hath been determined, that a person, who hath been long known by a name which was not his own, and who afterwards, for the purposes of concealment, assumes his own name, and in that name draws a bill of exchange, is not guilty

*Rex v. Aickles,*  
*Cases C. L. 345.*



guilty of forgery, although the bill was drawn with an intention to defraud; for, in order to constitute this offence, the deed or instrument forged must, by the forgery, be made a *false instrument*.

Sterling's case,  
Cases C. L. 95.  
Cogan's case,  
Cases C. L.  
356.

† It has also been decided, that a forged writing, purporting to be the last will and testament of a person who is not dead, is a forgery within the above statute; for although there can be no such instrument as a last will and testament, in contemplation of law, until after the decease of the testator, it is sufficient if the forged instrument appears upon the face of it to be good, whether the supposed testator be alive or dead.

Fitzgerald's  
case, Cases  
C. L. 20.

† So also it is said, that a forged will is within the statute, although the christian name of the supposed testator is wrong mentioned in the body of the will.

Birch and Mar-  
tin's case,  
Cases C. L. 74.

† It is decided, that, in an indictment for forging a will, "a certain paper writing, purporting to be the last will and testament of," &c. is a sufficient description of the instrument forged.

Mary Dunn's  
case, Cases  
C. L. 54.

† It has been decided, that if a person apply to a prize agent with a probate, purporting to be a probate of the will of her husband, in which she is named executrix, and obtain money from him due to the supposed testator, a receipt given by her as the wife and executrix of such testator is a forgery, if it appear that she is a different person, and not entitled to either of these characters; for although, if a person give a note entirely as his own, his subscribing it by a fictitious name will not make it a forgery, the credit in such case being given to the person subscribing it, yet if he give a receipt as the receipt of another, and by that means obtain credit, it is strictly and properly a false instrument.

Powell's case,  
Cases C. L. 72.  
Cases C. L.  
193. *notis*.  
Lavell's case,  
Cases C. L. 213.  
Jones and  
Palmer's case,  
Cases C. L.  
295.

† In an indictment for forgery, it is sufficient to aver a *general intent* to defraud, without setting out the particular manner by which the fraud was to be effected; for it is no answer to the charge of forgery, to say that there was no *special intent* to defraud any *particular person*: and if a particular person be named, a description of him to a *common intent* is all that is required: as if it charge the intention to defraud "*Messrs. Drummond and Co. Charing-cross*;" or to defraud "*A. B. C. D. &c. the stewards of the feast of the sons of the clergy*."

#### *Bills of Exchange of Foreign States and Corporations.*

By the 43 Geo. 3. c. 139. it is enacted, "That if any person, from and after the passing of this act, shall within any part of the United Kingdom of Great Britain and Ireland, falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or knowingly aid or assist in the false making, forging, or counterfeiting, any bill of exchange, or any promissory note, undertaking, or order for the payment of money, purporting to be the bill of exchange, promissory note, undertaking, or order for the payment of money,  
" of

“ of any foreign prince, state, or country whatsoever, or of any  
 “ minister or officer entrusted by or employed in the service of  
 “ any foreign prince, state or country, or of any person or com-  
 “ pany of persons resident in any foreign state or country, or of  
 “ any body corporate and politic, and body in the nature of a  
 “ body corporate and politic, created or constituted by any fo-  
 “ reign prince or state, with intent to deceive or defraud his ma-  
 “ jesty, his heirs and successors, or any such foreign prince,  
 “ state, or country, or with intent to deceive or defraud any per-  
 “ son or company of persons whomsoever, or any body corporate  
 “ and politic, or body in the nature of a body corporate and  
 “ politic whatsoever, whether the same be respectively resident,  
 “ carrying on business, constituted, or being in any part of the  
 “ United Kingdom, or in any foreign state or country, and whe-  
 “ ther such bill of exchange, promissory note, or order, be in the  
 “ English language or in any foreign language or languages, or  
 “ partly in one and partly in the other; or if any person, from  
 “ and after the passing of this act, shall, within any part of the  
 “ said United Kingdom, tender in payment or in exchange, or  
 “ otherwise utter or publish as true, any such false, forged, or  
 “ counterfeited bill of exchange, promissory note, undertaking,  
 “ or order, knowing the same to be false, forged, or counter-  
 “ feited, with intent to deceive or defraud his majesty, his heirs  
 “ and successors, or any foreign prince, state, or country, or any  
 “ person or company of persons, or any body corporate and  
 “ politic, or body in the nature of a body corporate and politic as  
 “ aforesaid, then every person so offending shall be deemed and  
 “ taken to be guilty of felony, and being thereof lawfully con-  
 “ victed shall be transported for any term of years not exceeding  
 “ fourteen years.

“ No person, from and after the passing of this act, shall  
 “ within any part of the United Kingdom of Great Britain and  
 “ Ireland engrave, cut, etch, scrape, or by any other means or  
 “ device make, or knowingly aid or assist in the engraving, cut-  
 “ ting, etching, scraping, or by any other means or device making,  
 “ in or upon any plate whatsoever, any bill of exchange, or any  
 “ promissory note or undertaking, or order for the payment of  
 “ money, purporting to be the bill of exchange, promissory note,  
 “ undertaking, or order of any foreign prince, state, or country,  
 “ or of any minister or officer entrusted by or employed in the  
 “ service of any foreign prince, state, or country, or of any per-  
 “ son or company of persons resident or being in any foreign  
 “ state or country, or of any body corporate and politic, or body  
 “ in the nature of a body corporate and politic, or constituted by  
 “ any foreign prince or state, or any part of such bill of ex-  
 “ change, promissory note, undertaking, or order, without an  
 “ authority in writing for that purpose from such foreign prince,  
 “ state, or country, minister or officer, person, company of per-  
 “ sons, or body corporate and politic, or body in the nature of a  
 “ body corporate and politic, or from some person duly autho-  
 “ rized to give such authority; or shall, within any part of the  
 “ said United Kingdom, without such authority as aforesaid, by  
 “ means

means of any such plate, or by any other device or means, make or print any such foreign bill of exchange, promissory note, undertaking, or order for the payment of money, or any part thereof, or knowingly, wilfully, and without lawful excuse, (the proof whereof to lie upon the party accused,) have in his or her custody any such plate or device, or any impression taken from the same; and if any person shall offend in any of the cases aforesaid, he shall be deemed and taken to be guilty of a misdemeanor and breach of the peace, and being thereof convicted according to law, shall be liable for the first offence to be imprisoned for any time not exceeding six months, or to be fined, or to be publicly or privately whipped, or to suffer one or more of the said punishments; and for the second offence to be transported to any of his majesty's colonies or plantations for the term of fourteen years; provided always, that nothing in this act contained shall extend, or be construed to extend, in any manner whatsoever, to repeal or alter any law or statute now in force for the prevention and punishment "of the crime of forgery in any respect whatsoever, within any "part of the said United Kingdom."

Upon this latter statute Manasseh Goldenstein was tried for forging a Prussian treasury note for one dollar. The indictment charged the instrument various ways, as a note, a bill, &c. but it did not set out the note itself in the original language with a translation, but it was averred to be a note, &c. Upon a case reserved, the judges held the indictment insufficient, on the ground that the original note should have been set out, in order that a court of error might see it was an instrument within the meaning of the statute. (3 Brod. and Bingham, 201.)

## CHAP. XXII.

### OF FALSELY PERSONATING ANOTHER.

THE offence of falsely personating another is intimately blended with the crime of forgery, and, as we have seen in the preceding chapter, is embodied in the same enacting clause in most cases, which makes the forging of instruments penal with respect to the public funds: when the proprietor is defrauded, it must necessarily be done by some one either producing a forged power of attorney, or falsely representing his person.

With respect to the personating others in courts of justice, and acknowledging bail, &c. in the names of persons not privy or consenting thereto, which is a felony by statute. 21 Jac. 1. c. 26. s. 2., that is an offence against the Public Justice of the kingdom, and will be found treated of hereafter in that chapter.

#### *Personating a Proprietor of Stock in the Public Funds.*

† Sect. 1. By 8 Geo. 1. c. 22. IT IS RECITED, "That divers frauds

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frauds and abuses have been or may be committed by persons falsely and deceitfully personating the true and real proprietors of the shares, annuities, and dividends of and in the capital stock and funds of such body politic or corporate as are established by act or acts of parliament in that behalf, or some of them :” AND ENACTED, “ That if any person or persons whatsoever shall

Personating proprietor of stock, and thereby transferring or receiving, or endeavouring to do so, felony without benefit of clergy.

“ falsely and deceitfully personate any true and real proprietors of the said shares in stock, annuities and dividends, or any of them, or any part thereof, and thereby transferring or endeavouring to transfer the stock, or receiving or endeavouring to receive the money of such true and lawful proprietor, as if such offender were the true and lawful owner thereof; then, and in every or any such case, all and every such person and persons (being thereof lawfully convicted in due form of law) shall be adjudged guilty of felony, and shall suffer as in cases of felony without benefit of clergy.”

† Sect. 2. By 9 Geo. 1. c. 12. s. 4. “ If any person or persons whatsoever shall falsely and deceitfully personate any true and real proprietor or proprietors of any the said order or orders, (certain exchequer orders mentioned in the act,) and thereby assigning or endeavouring to assign any of the said order or orders, or receiving or endeavouring to receive the money of such true and lawful proprietors, as if such offender were the true and lawful owner thereof; then, and in every or any such case, all and every such person and persons (being thereof lawfully convicted in due form of law) shall be adjudged guilty of felony, and shall suffer as in cases of felony without benefit of clergy.”

Extended to all frauds thereafter established by parliament.

† Sect. 4. By 33 Geo. 3. c. 30. IT IS RECITED, “ That the laws now in being have been found insufficient to prevent forgeries and frauds in the transferring stocks, annuities, and other public funds, transferrable at the bank of England: And whereas, for the better preventing such forgeries and frauds in future, it is necessary that further provision should be made, as well to prevent frauds practised by persons taking upon themselves to make transfers, in the books of the governor and company of the bank

Persons making, or assisting in making, transfers of stock in any other names than the owners, guilty of felony.

bank of *England*, of stock or annuities, or other funds, transferrable as aforesaid, whereof such persons are not the true owners and proprietors, as to prevent forgeries of such transfers in the names of the true owners or proprietors; and whereas it is also necessary, the better to prevent such forgeries and frauds, that the public accounts between the governor and company of the bank of *England* and the several owners and proprietors of stock, annuities, and other funds, transferrable at the bank of *England*, should be secured from falsification by means of false entries therein, or of the alteration of any of the words or figures thereof, or by any other ways or means whatsoever:" IT IS THEREFORE ENACTED, "That if any person or persons shall wilfully make, "or assist in making, any transfer of any interest, part, or share "of or in any stock or stocks, annuity or annuities, or other funds, "transferrable at the bank of *England*, in any of the books of "the said governor and company of the bank of *England*, in "which transfers of stock, annuities, or other funds as aforesaid, "are made, in the name or names of any person or persons not "being the owner or owners, or proprietor or proprietors, of "such stock, annuities, or other funds, transferrable as aforesaid, "with intent to defraud the said governor and company of the "bank of *England*, or any other body politic or corporate, or "any person or persons whatsoever, such person or persons so "making, or assisting in making, such transfer as aforesaid, shall "be deemed guilty of felony, and shall suffer death as a felon or "felons, without benefit of clergy." (1)

Parr's case,  
Old Bailey,  
Jan. Sess. 1787.  
Cases C. L.  
2d edit. 341.

† Sect. 5. It hath been determined on the above statutes, that obtaining and indorsing a dividend warrant at the bank of *England* in the name of a stockholder, is "personating a proprietor, and thereby endeavouring to receive the dividend," although no attempt whatever is made to receive the money at the pay-office.

#### *Personating Seamen and Greenwich Pensioners.*

Penalty of personating seamen,

† Sect. 1. By 31 Geo. 2. c. 10. s. 24. IT IS RECITED, "That divers wicked practices have been carried on, by personating and falsely assuming the names and characters of officers, seamen and others, entitled, or supposed to be entitled, to wages, pay, or other allowances of money, or prize money, for serving on board of ships or vessels of the royal navy, and by forging and counterfeiting letters of attorney, bills, tickets, assignments, last wills, and other authorities and powers, from such officers and seamen, and by falsely taking out probate of wills and letters of administration to such officers and seamen;" AND ENACTED, "That whosoever willingly and knowingly shall personate, or "falsely assume the name or character of, or procure any other "to personate, or falsely to assume the name or character of any "officer, seaman or other person, entitled or supposed to be "entitled to any wages, pay, or other allowances of money, or "prize money, for service done on board of any ship or vessel "of his majesty, his heirs or successors; or the executor or administrator,

(1) See 35 Geo. 3. c. 66. s. 7. 37 Geo. 3. c. 46. s. 7. containing in substance the same enactments.

ministrator, wife, relation, or creditor of any such officer or seaman, or other person, in order to receive any wages, pay, or other allowances of money, due, or supposed to be due or payable, for or on account of the services of any such officer or seaman, or other person as aforesaid; or shall forge, or counterfeit, or procure to be forged or counterfeited, any letter of attorney, bill, ticket, certificate, assignment, last will, or any other power or authority whatsoever, in order to receive any such wages, pay, or other allowances of money, or prize money, due, or supposed to be due, to any such officer or seaman, or other person as aforesaid; or shall willingly and knowingly take a false oath, or procure any other person to take a false oath, to obtain the probate of any will or wills, or to obtain letters of administration, in order to receive the payment of any wages, pay, or other allowances of money, or prize money, due, or that were supposed to be due, to any such officer, seaman, or other person as aforesaid, who has really served, or was supposed to have served on board of any ship or vessel of his majesty, his heirs or successors; every such person so offending, being lawfully convicted of any such offence or offences, shall be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy."

or of forging letters of attorney, &c. or making a false oath to obtain probate of any will, &c. of such persons, is death.

† Sect. 2. By 9 Geo. 3. c. 30. s. 5. "For the more speedy and effectual bringing to justice persons who shall falsely assume the names or characters of officers or seamen, or other persons; or shall forge or counterfeit, or caused to be forged or counterfeited, any letter of attorney, bill, ticket, certificate, assignment, last will, or other authority, to receive any wages, pay, or other allowance, due to any officer, seaman, or other officer, in, or who has been, or shall be in, his majesty's service, or shall utter or publish the same as true; or who shall be guilty of stealing or embezzling his majesty's naval stores:" it is ENACTED, "That "it shall and may be lawful to and for the treasurer, comptroller, "surveyor, clerk of the acts, or any commissioner of the navy "for the time being, and they are hereby respectively authorized "and empowered, from time to time, in all places whatsoever, "to do, perform, exercise, and execute the office and duty of a "justice or justices of the peace, to all intents and purposes "whatsoever, in causing any person or persons who shall be "charged with forging or counterfeiting, or procuring to be "forged or counterfeited, any letter of attorney, bill, ticket, certificate, assignment, last will, or other power or authority; or "with uttering or publishing the same as true, in order to "receive any wages, pay, or other allowance, due to any officer, "seaman, or other person, who is, or has been, or shall hereafter "be, in the service of his majesty, his heirs or successors; or "with taking, or procuring false oaths to be taken, for any of "the purposes aforesaid; or to obtain a probate of any will, or "letters of administration, in order to receive such wages, pay, "or other allowance; or with stealing or embezzling of any naval "stores, the property of his majesty, his heirs or successors; to "be apprehended, committed, and prosecuted, for the same;

Treasurer, and other officers of the navy, empowered to act as justices in any of the cases here mentioned.

and

“ and all constables, headboroughs, keepers of gaols and prisons, and all other officers whatsoever, shall, and they are hereby respectively required, from time to time, diligently to execute, perform, and obey, all such warrant and warrants as shall be made, directed, issued, or given to them, or any of them, by any one or more of the persons aforesaid, touching any of the matters and things herein-before contained.”

Penalty of personating, &c.

† *Sect. 3.* By 3 Geo. 3. c. 16. s. 6. IT IS RECITED, “ That divers wicked practices may be carried on by persons knowingly and willingly personating and falsely assuming the name and character of any out-pensioner of the said hospital, in order to receive the money due to any such out-pensioner, on account of his out-pension; ” AND ENACTED, “ That whosoever willingly and knowingly shall personate or falsely assume the name or character of, or procure any other to personate or falsely to assume the name and character of any person intitled, or supposed to be intitled, as an out-pensioner, to any out-pension or allowance of money from the commissioners or governors of the said hospital, in order to receive the money due, or supposed to be due, on such out-pension; every such person so offending, and being lawfully convicted of any such offence or offences, shall be deemed guilty of felony, and suffer death as a felon, without benefit of clergy.” (Clergy restored by 4 Geo. 4. c. 46.

Penalty of personating seamen, or of forging letters of attorney, &c. or making a false oath to obtain probate of any will, &c. of such persons, is death.

† *Sect. 1.* By 31 Geo. 2. c. 10. s. 24. IT IS RECITED, “ That divers wicked practices have been carried on, by personating and falsely assuming the names and characters of officers, seamen and others, entitled, or supposed to be entitled to wages, pay or other allowances of money, or prize money, for serving on board of ships or vessels of the royal navy, and by forging and counterfeiting letters of attorney, bills, tickets, assignments, last wills and other authorities and powers from such officers and seamen, and by falsely taking out probate of wills and letters of administration to such officers and seamen,” and therefore it IS ENACTED, “ That whosoever willingly and knowingly shall personate, or falsely assume the name or character of, or procure any other to personate, or falsely to assume the name or character of any officer, seaman or other person, *entitled, or supposed to be entitled,* to any wages, pay, or other allowances of money, or prize money, for service done on board of any ship or vessel of his majesty, his heirs, or successors; or the executor or administrator, wife, relation or creditor of any such officer or seaman, or other person, in order to receive any wages, pay, or other allowances of money, or prize money, due, or supposed to be due or payable, for or on account of the services of any such officer or seaman, or other person as aforesaid; or shall forge or counterfeit, or procure to be forged or counterfeited, any letter of attorney, bill, ticket, certificate, assignment, last will, or any other power or authority whatsoever, in order to receive any such wages, pay, or other allowances of money, or prize money due, or supposed to be due, to any such officer or seaman, or other person as aforesaid; or shall willingly and knowingly take a false oath, or procure any other person

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“ person to take a false oath, to obtain the probate of any will or  
“ wills, or to obtain letters of administration, in order to receive  
“ the payment of any wages, pay, or other allowances of money,  
“ or prize money due, or that were supposed to be due, to any  
“ such officer, seaman, or other person, as aforesaid, who has  
“ really served, or was supposed to have served on board of any  
“ ship or vessel of his majesty, his heirs or successors; every  
“ such person so offending, being lawfully convicted of any such  
“ offence or offences, shall be deemed guilty of felony, and shall  
“ suffer death as a felon, without benefit of clergy.”

By 55 Geo. 3. c. 6. s. 32. “ If any person or persons shall  
“ willingly or knowingly personate or falsely assume, or cause or  
“ procure any other person to personate, or falsely assume the  
“ name or character of any commission, warrant, or petty officer,  
“ or seaman, or any commissioned or non-commissioned officer  
“ of marines, or marine, or any other person entitled or supposed  
“ to be entitled to any wages, pay, prize money, bounty money,  
“ or other allowances of money, for or in respect of services per-  
“ formed or supposed to have been performed on board of any  
“ ship or vessel of his majesty, his heirs or successors; or the wife,  
“ widow, executor or administrator, relation or creditor of any  
“ such officer or seaman, or other person as aforesaid, in order  
“ to receive any wages, pay, prize money, bounty money, or other  
“ allowances of money due or supposed to be due, for or in re-  
“ spect of the services of any such officer, seaman, marine, or  
“ other person as aforesaid, performed or supposed to have been  
“ performed on board of any ship or vessel of his majesty, his  
“ heirs or successors, shall be guilty of felony without benefit  
“ of clergy.”

By reference to the above acts it will be seen, that the personating must be of some person who is *entitled*, or *supposed* to be entitled, to pay or prize money. Therefore it has been held necessary to shew that there was some person in existence, who, *prima facie*, *might* be entitled to receive such pay or prize money; this was decided in the case of one Brown, who was tried at the Winchester spring assizes 1800, who, under the assumed name of William Wheeler, obtained a sum of money, stating that he was entitled to it as prize money, by having served on board the *Terpsichore* frigate, and produced a certificate apparently regular in its form to corroborate his statement. There was no evidence given that any such person as William Wheeler was entitled to prize money, or *prima facie* entitled to it as a seaman on board the *Terpsichore*, and on this ground the court held the conviction wrong. This decision was afterwards confirmed in a subsequent case of one Charles M'Annelly.—(2 E. P. C. 1009.)

Falsely personating another, though for the purposes of fraud, is no more than a misdemeanor at common law, but when done in combination, the parties may be indicted for a conspiracy. (2 E. P. C. 1010.—1 L. C. C. 44.—2 E. P. C. P. 856.)

See further 57 Geo. 3. c. 127. for granting certain allowances out of the *Droits d'Admiralty* to Greenwich Hospital, by which it is made felony without benefit of clergy, to personate those entitled to the allowances given by that act.

CHAP.



## CHAP. XXIII. OF CHEATS.

**CHEATS** punishable by public prosecution, are of two kinds :

1. By the common law.

2. By statute.

(a) 2 Roll. 107.  
C. Jac. 497.

2 R. Abr. 78.

1 Keble, 849.

Modern, 42.

Farresley, 40.

But see the 16

Car. 2. c. 7. and

9 Ann. c. 14. in-

fra. (b) 1 Sid.

312. (c) 1 Sid.

431. (d) Noy,

103. (e) Noy, 99.

Moor, 630. C.

Eliz. 531.

1 Modern, 46.

2 Jones, 64.

(f) Noy, 99.

(g) See the books

above cited; but

2 R. Abr. 863.

C. and 12 Co.

223, are contrary.

(h) 6 Mod. 105.

Salkeld, 379.

3 Modern, 18.

L. Ray, 1013.

Sess. Cas. 201.

*Sect. 1.* And first it seemeth, that those which are punishable at common law, may, in general, be described to be deceitful practices, in defrauding or endeavouring to defraud another of his known right by means of some artful device, contrary to the plain rules of common honesty (1); as by playing with false dice (a); or by (b) causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by (c) persuading a woman to execute writings to another, as her trustee, upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a judgment, &c.; or by (d) suppressing a will; or by (e) levying a fine in another's name, or (f) suing out an execution upon a judgment for him, or acknowledging an action in his name, without his privity, and against his will; in which cases, by some good (g) opinions, the record may be vacated.

223, are contrary.

*Sect. 2.* It (h) seemeth to be the better opinion, that the deceitful receiving of money from one man to another's use, upon a false pretence of having a message and order to that purpose, is not punishable by a criminal prosecution, because it is accompanied with no manner of artful contrivance, but wholly depends on a bare naked lie; and it is said to be needless to provide severe laws for such mischiefs, against which common prudence and caution may be a sufficient security.

† Therefore

(1) It may be doubted, says Mr. East, whether this definition of Hawkins be sufficiently accurate or distinct to be taken as a definition of the offence at common law, and that learned writer founds his doubts upon a review of the several cases of indictments for cheats at common law, which he observes, in order to be supported, it is necessary that the cheat must be shewn to be effected by some false public token: as false weights or measures, or the like. Procuring goods or money, or cheating by a mere naked lie, is not an indictable offence; as where one Lewis was indicted at common law for a cheat, in depositing as a security for money advanced, a quantity of gum, affirming it to be gum seneca, and afterwards selling it to the prosecutor for such, affirming it to be so and that it was worth 7l. whereas it was not that article, and worth but 3l. Judgment was arrested, being no more than a false affirmation, for which the party was not indictable unless he came with false tokens, (R. v. Lewis, East, 28 Geo. 2.): or where one obtained money of another, by pretending to come by the command of a third person, to demand a debt or the like in his name, showing no voucher or token for his authority; it was holden not indictable, for it was the party's own fault to trust him. (Jones's case, Salk. 379; see also the case of R. v. Gibbs, 1 E. R. 185. 2 Str. 365.)

If the defendant make use of an apparent token, which in reality upon the face of it has no more credit than his own assertion, it will not differ the case. Thus one Lara bought lottery tickets and pretended to pay for them by giving a draft upon his banker; it turned out that he had no money at the bankers' upon whom he had drawn the cheque, nor had any authority to draw it. It was held that this was no false token, for the bankers' cheque drawn by the defendant himself was no more than his own assertion that the money would be paid. (R. v. Lara, 6 T. R. 565.) So where one Wildus, a brewer, sent casks to a customer, marked as containing so much ale, and writing a letter that they contained so much, when in fact they contained less. Indictment for this offence was quashed, as being no false token, but only the defendant's own assertion; (cited by Lord Mansfield, in 2 Burr. 1128.) Many instances found in the books of indictment for cheats at common law, upon private tokens, will upon examination be found to be founded either in conspiracy or forgery at common law: (See East P. C. title Cheats.) But the examination is now of no great importance, since the extension of the law by the subsequent st. of 30 Geo. 2. c. 24. enlarged by 52 Geo. 3. c. 64.

† Therefore it hath been decided, that an indictment will not lie at common law against a person for selling beer short of the due and just measure, as sixteen gallons instead of eighteen gallons, for this is only an inconvenience and injury to a private person, arising from that private person's own negligence and carelessness in not measuring the liquor upon receiving it, to see whether it held out the just measure or not; but if a tradesman uses false weights and measures in the general course of his dealing, or sell by them to any particular customer, it is an indictable offence, for this is a deception that common care and prudence is not sufficient to guard against. And upon this distinction it has been decided, that a pawnbroker who procures a gold watch chain of gold no way agreeing with the standard, but being according to the rate of twelve carats and two grains in the pound troy weight worse than the standard, and knowingly exposes and sells the same as and for a thing wholly made of gold, and agreeing with the said standard, is not indictable; for being neither a sale either by false weights or false measures, it is not a public offence, but a mere private imposition, against which a man's own common prudence ought to be a sufficient guard.

Vide Wheatley's case, Bur.  
1125.  
Black. 273.

Rex v. Bower,  
Cowp. 323.

Sect. 3. Some of the abovementioned offences are punishable not only with fine and imprisonment, but also with farther infamous punishment (as cheating with false dice, especially if the offender be a common gamester); others are punishable with fine and imprisonment only, by the discretion of the judges, which is regulated by the circumstances of each particular case; and some of them are made felonies by 21 Jac. c. 26. as appeareth from the chapter of "Offences against Public Justice."

See the authorities cited in  
sect. 1. and the  
acts recited  
infra, sect. 8  
and 9.

† II. OFFENCES of this kind by statute are those which are effected by means of a *false privy token*, or by means of a *false pretence*.

† As to the first particular, *viz.* cheating another by means of a false privy token.

Sect. 4. This depends on the 33 Hen. 8. c. 1. which recites, that many light and evil-disposed persons, not minding to get their living by *truth*, but compassing and devising daily how they may unlawfully obtain and get into their hands and possession goods, chattels, and jewels of other persons, for the maintenance of their unthrifty living, and also knowing that if they came to any of the same goods, chattels, and jewels by *stealth*, that then they, being thereof lawfully convicted according to the laws of this realm, shall die therefore, have now of late falsely and deceitfully contrived, devised, and imagined *privy tokens* and *counterfeit letters* in other men's names, unto divers persons their special friends and acquaintances, for the obtaining of money, goods, chattels, and jewels of the same persons, their friends and acquaintances, by colour whereof the said light and evil-disposed persons have deceitfully and unlawfully obtained and gotten great substance of money, goods, chattels, and jewels into their hands and possession, contrary to right and conscience: for the reformation whereof IT IS ENACTED, "That if any per-

1 Hale, 506.  
2 Sess. Cas. 27.  
Strange, 866.  
Bar. K. B. 298.  
331.  
Salkeld, 379.  
6 Modern, 105.  
111. 301. 311.  
9 St. Tr. 67.

"son

“son or persons shall falsely and deceitfully obtain, or get into  
 “his or their hands or possession, any money, goods, chattels,  
 “jewels, or other things of any other person or persons, by co-  
 “lour and means of any *privy false token*, or *counterfeit letter*  
 “made in another man’s name, to a special friend or acquaint-  
 “ance, for the obtaining of money, &c. from such person, and  
 “shall be thereof convicted, by witness taken before the lord  
 “chancellor, or before the justices of assize, or before the jus-  
 “tices of peace of any county, city, borough, town, or franchise  
 “in their general sessions, or by action in any of the king’s  
 “courts of record, every such offender shall suffer such punish-  
 “ment by imprisonment, setting upon THE PILLORY, or other-  
 “wise by any corporal pains, except pains of death, as shall be  
 “appointed by those before whom he shall be so convict.”

Dalton, 32.

† *Sect. 5.* And by 33 Hen. 8. c. 1. s. 2. it is further enacted,  
 “That as well the *justices of assize* for the time being, as also  
 “two justices of peace in every county, whereof the one to be  
 “of the *quorum*, may call and convene by process, or otherwise,  
 “to the said assizes, or general sessions, any person being sus-  
 “pected of any of the offences aforesaid, and commit or bail  
 “him till the next assizes or general sessions, there to be exa-  
 “mined and further ordered by their discretions.”

† By 33 Hen. 8. c. 1. s. 3. it is also further enacted, “That  
 “justices of the peace in every city, borough, town, and fran-  
 “chise within this realm, shall have the like jurisdiction, power,  
 “and authority at their *general sessions*, and otherwise, to do and  
 “execute all and every thing in all points, as other justices of  
 “the assizes in their circuits, or justices of the peace in the  
 “counties by virtue of this act, saving to the *party grieved* by  
 “such deceit, such remedy, by way of action or otherwise, of  
 “and for the same money, goods, chattels, jewels, or other thing  
 “so obtained, as he might have had if this act had never been  
 “made.”

3 Inst. 123.

*Sect. 6.* Sir Edward Coke is of opinion, that the offender  
 cannot be fined in a prosecution upon this statute, because it is  
 expressly ordained, that some corporal punishment shall be in-  
 flicted, and no other is mentioned; however, there is a prece-  
 dent in *Croke’s Reports*, by which it appears, that one convicted  
 on such a prosecution hath been adjudged not only to stand on  
 the pillory, but also to pay a fine of five hundred pounds, and to  
 be bound with good sureties to his good behaviour.

C. Car. 564.

2 Burr. 355.

Rex v. Munoz,  
2 Stra. 1127.

† *Sect. 7.* In order to bring an offender within the statute  
 33 Hen. 8. c. 1. there must be a *false token* used; and therefore  
 where one man went to the house of another, and pretended that  
 such a person had sent him to receive twenty pounds, and  
 received it, whereas such person did not send him, it was held no  
 offence within the statute.

The common law punishing only those cheats which were  
 effected by means of false *public* tokens, or by conspiracy or by  
 forgery, or which affected the public interest, the statute of  
 Henry the 8th went further, and punished those cheats which  
 were

were effected by means of "a false *privy* token or counterfeit letter made in another man's name to a special friend or acquaintance;" but this extension of the law being found inadequate to repress the practices of the fraudulent, the stat. of 30 Geo. 2. c. 24. was enacted, by which it was made penal to obtain money, goods, wares, or merchandizes by "*false pretences*." But this latter statute did not include choses in action, and therefore by 52 Geo. 3. c. 64. s. 1. it was enacted, that "all persons who knowingly and designedly, by false pretence or pretences, shall obtain from any person or persons, or from any body politic or corporate, any money, goods, wares, or merchandizes, or any bond, bill of exchange, bank note, promissory note, or other security for the payment of money, or any warrant or order for the payment of money, or delivery or transfer of goods or other valuable thing, with intent to cheat or defraud any person, &c. shall be deemed offenders against law and the public peace, and shall be liable to be prosecuted and punished in like manner as if they had knowingly and designedly, by false pretence or pretences, obtained any money, goods, wares, or merchandizes, from any person or persons, with intent to cheat or defraud any person or persons of the same." The punishment in the former statute of 30 Geo. 2. c. 24. of which this is an extension, is "to be put in the pillory (now abolished), or publicly whipped, or fined and imprisoned, or transported not exceeding the space of seven years, as the court shall in discretion think fit."

And by s. 2. of the same statute any justice, before whom any person is brought charged on oath with such offence, may commit or bail the party to answer the complaint at the next general or quarter sessions of the peace, or next sessions of oyer and terminer, and shall bind over the prosecutors by recognizance in a reasonable sum to prosecute, or in a sum not less than double the amount of the money or goods fraudulently obtained if they shall exceed 20*l.* in value. By s. 20. the *certiorari* is taken away.

The term "*false pretences*" is certainly a term of very extensive meaning, even a naked lie may be a false pretence; but whether it is to be so construed has never yet, I believe, received judicial determination, although the following case comes very near it. The defendant (Villeneuve) applied to Sir J. Broughton, telling him he was instructed by the Duc de Lauzun to take some horses from Ireland to London, and that he had been detained so long by contrary winds that he had expended all his money; Sir J. Broughton was thereupon induced to lend him some money; but it turning out that the whole story was a fiction, the defendant was tried and convicted on the stat. 30 Geo. 2. (cited by Buller in *R. v. Young*, 3 T. R. 98.) This was a mere false statement of the defendant, although a circumstantial one, to give it the appearance of probability.

Mr. J. Buller, in the case of the *K. v. Young* and others, says that the offence within the statute is "the obtaining by false pretences with intention to defraud," that if the intent were made out, and the false pretence used to effect it, the case was brought within the statute.

R. v. Young  
and others,  
3 T. R. 98.

With respect to false pretences, Lord Kenyon, in the same case, says, the statute extends to every case where a party has obtained money, &c. by falsely representing himself to be in a situation in which he was not, or any occurrence that had not happened, to which persons of *ordinary* caution might give credit.

In the case of one Airey (2 E. R. 30.) the indictment charged that one Barrow at K. &c. delivered to the defendant, a common carrier, certain goods to be carried by him from K. to one Leach at L. and there to be delivered to him; that the defendant received the goods under pretence of delivering them to him, and undertook so to do, but intending to cheat Barrow of his money, he afterwards unlawfully, &c. pretended to Barrow that he had carried the goods from K. to L. for the purpose of delivering them to Leach, and had delivered them to Leach at L., and that Leach had given him, the defendant, a receipt expressing such delivery of the goods to him, but that he had lost or mislaid the same, or had left it at home; and that the defendant therefore demanded of Barrow 16s. for the carriage of the said goods, by means of which false pretences he obtained the money, &c. On a writ of error after conviction judgment was affirmed.

So it is said all frauds affecting the crown and public at large are indictable as cheats at common law, as in the following case. One Treeve was a contractor with government to supply bread to the French prisoners of war confined in Eastwood hospital. He was indicted for that he "knowingly, wilfully, deceitfully, and "maliciously did provide, furnish, and deliver 500 lbs. weight of "bread to be eaten as food by the said prisoners of war, such "bread being then cured, made and baked in an unwholesome "and insufficient manner, and then and there being made of and "containing dirt, filth, and other pernicious and unwholesome "materials and ingredients, and not fit to be eaten by man; and "the said defendant then and there well knowing the said bread "to be made and baked in an unwholesome and insufficient "manner, and to be made of and to contain dirt, filth, and other "pernicious and unwholesome materials and ingredients not fit "to be eaten as aforesaid; whereby the said prisoners of war "did then and there eat of the said bread, and thereby then and "there became distempered in their bodies and injured and "endangered in their healths, to the great damage of the said "French prisoners, &c."

After conviction it was objected, in arrest of judgment, that the offence as laid was not indictable; as it did not appear it was done in breach of any contract with government or of any moral or civil duty. But the judges all held the conviction right, and indeed it was clearly an offence against the public health, for the selling of unwholesome provisions not fit for man to eat is undoubtedly an indictable offence. (E. P. C. vol. 2. p. 821. 4 Bl. Com. 162.)

So in the case of an apprentice having enlisted into a regiment of foot, without the knowledge of his master, who reclaimed him, and thereby the king was defrauded of the bounty money paid to him as a recruit. The defendant was convicted for the cheat,



without any distinct motive of ill-will towards any one in particular—and sometimes it is done with a fraudulent intent in the wrongdoer to benefit himself in the result, perhaps at great loss to the proprietor, though with but little comparative advantage to himself. Some classes of these offences will be found under other heads in this work: thus the burning of houses, mills, and warehouses will be found under the head of Arson—some again under the head of Riot, where the mischief is the result of a riotous assemblage—again, where the mischief is accompanied by assaulting the person, as in cutting garments, &c. it will be found under the title of Aggravated Assaults. Those cases which do not fall under the other divisions of this work, are classed in the present chapter as follows.

1. *Mischief to Freehold Property.* By destroying and damaging fences—by destroying trees, underwood, coppices, shrubs, &c.—by cutting of hop-binds—by destroying the head of a fish-pond.
2. *To Mines and Manufactures.* By burning or drowning coal mines—by destroying engines for draining of mines of coal lead, &c.—by other mischief to the air ways, &c. of mines—To manufactures, by breaking into them with intent to cut or destroy woollen, silk, cotton or linen goods—by breaking machinery.
3. *To Public Works.* By breaking down sea and river banks—injuring the same by taking away piles, chalk, &c.—by demolishing locks on navigable rivers—by wilful hurt to the navigation of rivers made navigable by act of parliament—by destroying turnpikes.
4. *To certain particular Works:*—viz. Powdike in marsh land—the Bedford level—certain marshes in Norfolk—certain lands in Devon—the West India docks in London, and vessels lying within them.
5. *To Cattle.* By killing, maiming, and wounding—by cruel usage to animals.
6. *To Chattels.* By burning piles of wood—by breaking and cutting carriages, harness, &c. to prevent the free passage of grain—by destroying granaries and scattering the grain, &c.
7. *To Private Ships.* Destroying ships by master or mariners—by wilfully casting them away by master or mariners—by making holes in them or stealing the pumps—by destroying effects belonging to ships in distress—by putting out false lights, &c.—by setting fire to ships keels, &c.—by cutting or damaging cordage of ships moored in the Thames—by the king's ships running down others.
8. *To the King's Ships, Docks, &c.* By wilfully firing the same.

#### 1. *Mischief to Freehold Property.*

##### *Destroying Fences.*

Vide a critical commentary upon this act,

† By 13 Edw. 1. st. 1. c. 46. it is enacted, "That where  
 \* sometime it chanceth, that one having right to approve, doth  
 " then

" then levy a dyke or an hedge, and some by night or at another season, when they suppose not to be espied, do overthrow the hedge or dyke, and it cannot be known by verdict of the assize or jury who did overthrow the hedge or dyke, and men of the towns near will not indict such as be guilty of the fact, the towns near adjoining shall be distrained to levy the hedge or dyke at their own cost, and to yield damages."—And by 3 and 4 Edw. 6. c. 6. " such person as shall bring an assize thereupon, and have judgment to recover, shall have his damages trebled, by the judgment of the court."

2 Inst. 473.  
See also cases upon it, Skinner, 93.  
C. Car. 281.  
440. 580.  
Dyer, 47, 316.  
339.  
4 Co. 38.  
11 Co. 74.  
1 Roll. 365.

The stat. 6 Geo. 1. c. 16. entitled " An act to explain and amend" a former act (of (a) 1 Geo. 1. st. 2. c. 48.), reciting certain mischiefs after mentioned; and that " some doubts have arisen whether the offences committed in the day-time mentioned in that act are punishable by the said act. And whereas there is no provision made in the said act for punishing the offences committed by persons who shall break open, throw down, level, or destroy the hedges, gates, posts, stiles, railing, fences, ditches, banks, walls, or other inclosures of such woods, wood grounds, plantations, and coppices: therefore, for the explaining and amending the said act, and for remedying the several mischiefs hereinbefore mentioned, and for the better preserving of all such wood springs, or springs of wood, poles, quickwoods, plantations, underwoods, coppice woods, gates, posts, stiles, railing, fences, hedges, walls, and other inclosures of woods, from being unlawfully cut, taken, spoiled, broken, burnt, destroyed, defaced, or carried away; and for the better discovering and more effectual punishment of such offenders therein, their aiders and abettors; and for the providing satisfaction for the damages the respective proprietors thereof shall sustain thereby," enacts, " that if any person or persons, after the 24th of June, 1720, shall, either by day or by night, cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away, any wood springs or springs of wood, trees, poles, wood, tops of trees, underwoods, or coppice woods, thorns, or quicksets, without the consent of the owner of such woods, wood grounds, parks, chaces, or coppices, plantations, timber trees, fruit trees, or other trees, thorns, or quicksets, or of the persons chiefly entrusted with the care and custody thereof; or shall break down, throw down, level, or destroy any hedges, gates, posts, stiles, railing, walls, fences, dikes, ditches, banks, or other inclosures of such woods, wood-ground, parks, chaces, or coppices, plantations, timber trees, fruit trees, or other trees, thorns, or quicksets;" the party grieved shall recover damages against the parish, &c. in the same manner and form as for dikes and hedges overthrown by persons in the night, or at another season when they suppose not to be espied, as is provided by the stat. 13 Edw. 1. st. 1. c. 46.

Then by s. 2. it is further enacted and declared, " that if any person or persons, at any time after the said 24th of June, in a riotous, open, tumultuous, or in a secret and clandestine manner, forcibly, or wrongfully, and maliciously, and without the consent of the proprietor, wood-reeve, wood-keeper, or person chiefly entrusted with the care, oversight and custody

" of

(a) Vide next Section, Trees.



“ of such woods, wood-grounds, parks, chaces, coppices, or  
 “ plantations, shall cut down, destroy, break, bark, throw down,  
 “ burn, take, deface, spoil, or carry away, any wood or springs of  
 “ wood, underwood, or coppice wood; or shall in such a riotous,  
 “ forcible, tumultuous, secret, or clandestine manner as afore-  
 “ said, maliciously break open, throw down, level or destroy any  
 “ hedges, gates, posts, stiles, rails, fences, ditches, bank, or inclo-  
 “ sures of such woods, wood-grounds, coppices, plantations,  
 “ timber trees, fruit trees, or other trees, thorns, or quicksets;  
 “ that then it shall and may be lawful to and for any two or  
 “ more justices of the peace of the county, &c. wherein any  
 “ such offence or offences shall be committed, or for the justices  
 “ in open sessions, upon complaint to them made by any inha-  
 “ bitant of the aforesaid parish, &c. or place, or of the owner of  
 “ such tree or trees, woods, wood-grounds, parks, chaces, cop-  
 “ pices, or plantations, or of any other, to cause such offender or  
 “ offenders to be apprehended, for the trespasses and offences  
 “ aforesaid, or any of them, and to hear and finally determine  
 “ and adjudge all and every the offence and offences aforesaid.  
 “ And if the justices shall convict any person or persons of all  
 “ or any of the trespasses and offences aforesaid, then such jus-  
 “ tices, immediately after such conviction, shall and are hereby  
 “ required to inflict all and every the same penalties and punish-  
 “ ments in the said act of the first Geo. 1. hereinbefore men-  
 “ tioned, as fully and largely, and in the same manner, for all  
 “ and every the crimes and offences herein-before expressed,  
 “ although not contained in the said act, as if the same were  
 “ here again repeated and re-enacted.”

† *Sect. 1.* And it is further enacted by 6 Geo. 1. c. 16. “ That  
 “ whoever shall break down, throw down, level, or destroy any  
 “ hedges, gates, posts, stiles, railings, walls, fences, dykes, ditches,  
 “ banks, or other inclosures of such woods, wood-grounds, parks,  
 “ chaces, or coppices, plantations, timber trees, fruit or other  
 “ trees, thorns or quicksets, shall by 6 Geo. 1. s. 2. c. 43. be  
 “ committed to the house of correction for three months, and  
 “ where there are no houses of correction, to any other prison of  
 “ the county or place for four months, and whipped, and on con-  
 “ viction, by two justices in open sessions; and such lords of  
 “ manors, owners and proprietors of the same, that is, are, or  
 “ shall be damaged thereby, shall have the remedy and satisfac-  
 “ tion from the adjoining parishes and places as is given by the  
 “ above recited act of 13 Edw. 1.”

† *Sect. 2.* And it is further enacted by 16 Geo. 3. c. 30. s. 8.  
 “ Whoever shall wilfully pull down or destroy, or cause to be  
 “ wilfully pulled down or destroyed, the pale or pales, or any  
 “ part of the walls of any forest, chase, purlien, ancient walk,  
 “ park, paddock, wood, or other ground where any red or fallow  
 “ deer shall be then kept, without the consent of the owner, or  
 “ person chiefly intrusted with the custody thereof, or being  
 “ otherwise duly authorised, shall forfeit and pay the sum of  
 “ thirty pounds, on information upon oath before one justice, by  
 “ one witness, &c. and whoever, having been convicted, shall  
 “ offend a second time, shall, on conviction by indictment, be  
 “ transported

"transported for seven years, provided the prosecutions be within six months."

† Sect. 3. By 9 Geo. 3. c. 29. s. 3. "Whoever shall wilfully or maliciously demolish, pull down or otherwise destroy or damage any fence made for dividing or inclosing any common, waste, or other lands or grounds in pursuance of any act of parliament, or shall cause or procure the same to be done, he shall be guilty of felony, and transported for seven years." Prosecution to be commenced in eighteen months after the offence committed.

*Destroying Trees and Underwood.*

† Sect. 1. By 1 Geo. 1. c. 48. it is enacted, "That whoever shall maliciously break down, cut up, pluck up, throw down, bark, or otherwise destroy, deface, or spoil any timber tree, fruit tree, or any other tree, on conviction by any two justices of the place, or by the justices in sessions, on complaint to them made by an inhabitant, or the owner, &c. shall be kept to hard labour for three months, and whipped once a month, or if there be no house of correction, to any other prison for four months, and whipped once in every month by the common hangman, and afterwards find sureties for their good behaviour for two years, and the party grieved may recover damages and costs from the inhabitants of the parish, &c. in the same manner and form as is directed by the 13 Edw. 1. st. 1. c. 46. for hedges and dikes overthrown by persons in the night, unless the offender be convicted in six months by the parish."

† Sect. 2. And by the black act, 9 Geo. 1. c. 22. "Whoever shall unlawfully and maliciously cut down, or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard or plantation, for ornament, shelter, or profit; or shall forcibly rescue any person in lawful custody for the same; or shall by gift, or promise of money, or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act, shall suffer death *without benefit of clergy*." (1)

† Sect. 3. By 29 Geo. 2. c. 36. s. 8. amended by 31 Geo. 2. c. 41. "If any person shall unlawfully cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away any tree, growing in any waste, wood, or pasture, in which any person or persons, or bodies politic or corporate, hath or have a right of common, he shall incur the like penalty as by 6 Geo. 1. c. 16."

† Sect. 4. By 6 Geo. 3. c. 36. IT IS RECITED, "That divers persons have, of late years, wilfully and maliciously cut down, barked, or otherwise destroyed, timber trees, and trees standing for, and likely to become, timber, growing as well in the several forests, &c.

Penalty on cutting down, &c. in the night-time, any timber trees, or roots, &c. in inclosed ground, &c.

(1) The statute of 4 Geo. 4. c. 54. repeals so much of the above clause as excludes benefit of clergy, and in lieu thereof enacts, "That every person duly convicted of the said felony, or of procuring, counselling, aiding, or abetting the commission thereof, shall be liable, at the discre-

tion of the court, to be transported beyond the seas for life, or for such term, not less than seven years, as the court shall adjudge, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding seven years."

forests, chases, and other open grounds, as in the woods, and plantations, and inclosed grounds, within this kingdom; to the great detriment of the owners of such trees, and to the discouragement of planting in general, so beneficial to *Great Britain*:" AND ENACTED, "That all and every person and persons who shall, in the *night-time*, lop, top, cut down, break, throw down, bark, burn, or otherwise spoil or destroy, or carry away, any oak, beech, ash, elm, fir, chestnut, or asp, timber tree, or other tree or trees standing for timber, or likely to become timber, without the consent of the owner or owners thereof first had and obtained, shall be subject and liable to the like pains and penalties as in cases of felony; and the court, by and before whom such person or persons shall be tried, shall, and hereby have authority to transport such person or persons, for the space of seven years, to any of his majesty's plantations in *America*, in like manner as other felons are directed to be transported by the laws and statutes of this realm: And all and every person and persons who shall be wilfully aiding, abetting, or assisting, in such cutting down, breaking, throwing down, barking, burning, or otherwise spoiling or destroying, or carrying away, any such oak, beech, ash, elm, fir, chestnut, or asp, timber tree, or other tree or trees standing for timber, or likely to become timber, as aforesaid, shall be liable to the same punishment, as if he, she, or they, had stolen the same."

Persons convicted of damaging, &c. any timber trees, &c. or the lops or tops thereof, &c. forfeit, &c.

† Sect. 5. By 6 Geo. 3. c. 48. IT IS RECITED, "That the preservation of timber trees, or trees likely to become timber, is of great consequence to this kingdom;" AND ENACTED, "That every person who shall *wilfully* cut or break down, bark, burn, pluck up, lop, top, crop, or otherwise deface, damage, spoil, or destroy, or carry away, any timber tree or trees, or trees likely to become timber, or any part thereof, or the lops or tops thereof, without the consent of the owner or owners thereof first had and obtained, or in any of his majesty's forests and chases, without the consent of the surveyor or surveyors, or his or their deputy or deputies, or person or persons intrusted with the care of the same, and shall be thereof convicted upon the oath of one or more credible witness or witnesses, before any one or more of his majesty's justices of the peace, for the county, city, riding, division, district, or place, wherein such offence shall have been committed, shall, for the first offence, forfeit and pay such sum of money, not exceeding twenty pounds, as to such justice or justices shall seem meet, together with the charges previous to and attending such conviction, to be ascertained by such justice or justices who shall convict the offender; and upon non-payment thereof, such justice or justices shall commit the offender to the common gaol of the county or place where the offence shall be committed, there to remain without bail or mainprize for any time not exceeding twelve months, nor less than six months, or until the penalty and charges shall be paid; and if any person so convicted shall be guilty of the like offence a second time, and shall be thereof convicted in like manner, such person shall forfeit

## Ch. 24. MALICIOUS MISCHIEF, &c.

“feit and pay such sum of money, not exceeding thirty pounds, as to such justice or justices shall seem meet, together with the charges previous to and attending such conviction, to be ascertained by such justice or justices who shall convict the offender; and upon non-payment thereof, such justice or justices shall commit the offender to the common gaol of the county or place where the offence shall be committed, there to remain without bail or mainprize for any time not exceeding eighteen months, nor less than twelve months, or until the penalty and charges shall be paid; and if any person so convicted shall be guilty of the offence a third time, and shall be thereof convicted in like manner, such person shall be deemed guilty of felony, and the court, by and before whom such person shall be tried, shall and hereby hath authority to transport such person or persons, for the space of seven years, to any of his majesty's plantations in *America*, in like manner as other felons are directed to be transported by the laws and statutes of this realm.”

† Sect. 6. By 6 Geo. 3. c. 48. s. 2. it is enacted, “That all oak, beech, chestnut, walnut, ash, elm, cedar, fir, asp, lime, sycamore, and birch trees, shall be deemed and taken to be timber trees, within the true meaning and provision of this act.”

† Sect. 7. By 6 Geo. 3. c. 48. s. 4. IT IS RECITED, “That many idle and disorderly persons have of late years made a practice of going into the woods, underwoods, and wood-grounds of divers of his majesty's subjects, and there cut, and carried away, great quantities of young wood, of various kinds, for making of poles and walking sticks, and for various other uses; and in beech, and other woods and underwoods, under pretence of getting firewood, have cut down, boughed, split off, or otherwise damaged or destroyed the growth of the said woods and underwoods, to the great injury and damage of the lawful owners thereof; and that the laws now in being are not found sufficient to remedy the aforesaid evils:” and therefore enacted, “That all and every person and persons who shall go in the woods, underwoods, or wood-grounds, of any of his majesty's subjects, not being the lawful owner or owners thereof, and shall there cut, lop, top, or spoil, split down or damage, or otherwise destroy, any kind of wood or underwood, poles, sticks of woods, green stubs, or young trees, or carry or convey away the same; or shall have in his, her, or their custody, any kind of wood, underwood, poles, sticks of wood, green stubs, or young trees, and shall not give a satisfactory account how he, she, or they came by the same, and shall be thereof convicted before any one or more of his said majesty's justices of the peace, on the oath of one or more credible witness or witnesses; shall, for the first offence, forfeit and pay, immediately on conviction, any sum not exceeding the sum of forty shillings, together with the charges previous to and attending such conviction, to be ascertained by the said justice or justices who shall convict the offender or offenders: And if any person or persons shall commit any of the offences aforesaid a second time,

Persons convicted of cutting, &c. any wood, &c. or who shall have any such in their custody, &c. forfeit, &c.

"time, and shall be thereof again convicted in manner aforesaid; he, she, or they, shall forfeit and pay any sum not exceeding the sum of five pounds, together with the charges previous to and attending such conviction, to be ascertained as aforesaid: And if any person or persons shall commit any of the offences aforesaid a third time; that then such person and persons, being duly convicted thereof according to law, shall be deemed and adjudged an incorrigible rogue or rogues, and shall be punished as such."

Justices to put  
act in execution.

† *Sect. 8.* By 6 Geo. 3. c. 48. s. 5. it is further enacted; "That his majesty's justices of the peace for the respective counties, cities, ridings, divisions, or places, wherein any of the offences committed against this act shall be done, are hereby authorized to put this act in execution, and to administer an oath to any such credible witness or witnesses."

† *Sect. 9.* By 6 Geo. 3. c. 48. s. 6. it is recited, "That the mischiefs intended by this act to be prevented may be evaded on account of the offender's not being able to pay down the sum forfeited, and charges incurred thereby; such offenders frequently having no goods or other chattels, whereon the same can be levied;" therefore it is enacted, "That it shall and may be lawful for such justice or justices, unless the respective forfeitures shall be paid down upon conviction forthwith, where not otherwise directed by this act, by warrant under his or their hands and seals to commit such offender or offenders, for the first offence, to the house of correction for one month, to hard labour, and to be once whipped there; and for the second offence, where not otherwise directed by this act, to the house of correction for three months, to hard labour, and to be whipped there once in every one of the said three months."

Persons hinder-  
ing, or attempt-  
ing to prevent,  
seizing offend-  
ers, &c.

† *Sect. 10.* By 6 Geo. 3. c. 48. s. 7. it is further enacted, "That if any person or persons shall, at any time, hinder, or attempt to prevent, the seizing or securing any person employed in carrying away any such timber or other trees; every such person so hindering or attempting to prevent such seizing or securing, shall, for every such offence, forfeit and pay the sum of ten pounds to the person or persons who shall convict such offender: And if the said sum be not immediately paid on conviction, the person or persons so convicted shall be, by the justice or justices before whom he, she, or they, shall be convicted, committed to the house of correction, to hard labour for any time not exceeding six calendar months."

Application of  
forfeitures.

† *Sect. 11.* By 6 Geo. 3. c. 48. s. 8. it is further enacted, "That one moiety of all and every the forfeitures hereinbefore directed to be paid in pursuance of this act, and not otherwise directed, shall go to the informer, and the other moiety to the person or persons aggrieved."

Convictions to  
be certified to  
sessions.

† *Sect. 12.* By 6 Geo. 3. c. 48. s. 9. it is further enacted, "That the conviction and convictions of all and every offender and offenders against this act, shall be certified by the justice or justices of the peace before whom the same shall be made,  
"to

"to the next general quarter-sessions of the peace, to be filed amongst the records of the said sessions; which said conviction shall be good and effectual in law to all intents and purposes; and shall not be quashed, set aside, or adjudged void or insufficient, for want of any form of words whatsoever; nor to be liable to be removed by *certiorari* into his majesty's court of *King's Bench*, but shall be deemed and taken to be final to all intents and purposes whatsoever."

Conviction not liable to be quashed, &c.

† Sect. 13. It has been decided, that the statute 6 Geo. 3. c. 48. does not repeal 6 Geo. 3. c. 36. but that they are *in pari materia*, and to receive a construction accordingly.

Howe's case, Cases C. L. 378.

† Sect. 14. By 9 Geo. 3. c. 41. s. 8. it is recited, "That great destruction having been made of hollies, thorns, and quicksets, growing upon his majesty's forests and chases within this kingdom, to the great prejudice of his majesty's deer, and other game therein; and also of hollies, thorns, and quicksets growing in the woods and wood-grounds of his majesty's subjects; for the better preventing such evil practices and abuses for the future," it is enacted, "That the said clause in the said act made in the sixth year of his present majesty's reign, and all and every the penalties, forfeitures, and punishments thereby inflicted, and all other provisions, clauses, matters, and things relating thereto, shall extend, and be deemed, taken, and construed to extend, and shall be applied and put in execution, in relation to all his majesty's forests and chases within this realm; and to all and every person or persons who shall, without legal right or authority, by night or day, cut down, destroy, take, carry, or convey away any hollies, thorns, or quicksets growing or being upon any of his majesty's said forests or chases, or within the woods or wood-grounds of any of his majesty's subjects; or who shall have in his, her, or their custody or possession any such hollies, thorns, or quicksets, and shall not give a satisfactory account how he, she, or they came by the same, and shall be thereof convicted before any one or more of his majesty's justices of the peace in the manner prescribed and directed by the said act; and such justice or justices is or are hereby authorized to administer oaths, and proceed in the like manner for the conviction and punishment of every offender in the premises, as fully and effectually to all intents and purposes as if the several provisions in the said act had been herein particularly repeated and applied to the offences hereinbefore specified."

The recited clause, &c. extended to the Royal Forests.

† Sect. 15. By 13 Geo. 3. c. 33. reciting, that doubts having prevailed whether any other trees than those mentioned in 6 Geo. 3. c. 48. shall be deemed and taken to be timber trees within the meaning of the said act; "IT IS ENACTED, for the better preservation of the several useful and valuable timber trees hereafter mentioned, casually omitted to be mentioned in the said act, "That the trees called poplar, alder, larch, maple, and hornbeam, shall also be deemed and taken to be timber trees: And all and every person or persons who shall wilfully cut or break down, bark, burn, pluck up, lop, top,

Poplar, alder, larch, maple, and hornbeam, to be deemed timber trees.

"crop,

“ crop, or otherwise deface, damage, spoil, or destroy, or carry away any poplar, alder, larch, maple, and hornbeam, or any part thereof, or the lops or tops thereof, without the consent of the owner or owners thereof first had and obtained, or of some person intrusted with the care of such tree or trees; such person or persons shall, if found guilty of any offence or offences, be convicted in like manner as persons are directed so to be, for offences of the like kind, concerning trees, deemed timber trees, in the above in part recited act; and upon such conviction or convictions shall be liable to all and every the penalties, forfeitures, and punishments therein inflicted for any such like offence or offences; and all and every justice and justices of the peace is and are hereby authorized, on complaint made to him or them of any offence or offences, to administer oaths, and to proceed in like manner to conviction and punishment of every offender against this act, as fully and effectually as if the said trees hereby declared, deemed, and taken to be timber trees, had been expressly so deemed and declared to be in the said act passed in the sixth year of his present majesty's reign; and such conviction and convictions shall be certified by the justice or justices before whom the same shall be made to the next quarter-sessions of the peace to be holden for the county wherein such offence or offences were committed, in the form of words, or to that effect, directed by the said act; and all and every the forfeitures for offences against this act shall be paid and applied in the manner forfeitures are directed to be paid in the said recited act.”

It is remarkable, that two statutes passed in the same session of parliament, upon the same subject—the protection of trees—the enactments of which are very different. They both passed in the 6 Geo. 3. one being c. 36, the other c. 48. By the former it is made a felony, in *the night time*, to destroy any timber tree. By the latter, the wilfully destroying a timber tree is only a penalty of £20, to be recovered by summary conviction; a second offence incurs the penalty of £30; and the third offence is declared felony. By the black act, it is felony without benefit of clergy, unlawfully and *maliciously* to cut down or destroy any *trees* planted in any avenue, or growing in any garden, &c. for ornament, shelter, or profit. Agreeable, however, to the other ruling in the other cases comprised in the same clause of the black act, it must be done from malice against the owner of the trees, to subject the offender to the punishment formerly capital, but now, as altered by st. 4 Geo. 4. c. 54. to transportation, &c.

The names of the owners of the trees must be truly stated in the indictment, or it will be bad. (1 Leach, 287. *R. v. Patrie and Pepper*.)

The statutes of 6 Geo. 3. c. 36. and 6 Geo. 3. c. 48. also protect shrubs and plants; but as the wilful destruction of them is blended in the enacting clauses with the stealing of them, those clauses will be found before set out in title “*Larceny—of things attached to the freehold.*”

*Burning Heath, Furze, Fern, &c.*

By stat. 4 and 5 Will. and Mary, c. 23. s. 11. it is "provided and enacted, that for the better preserving the red and black game of grouse, commonly called heath-cocks, or heath-polts, no person whatsoever, on any mountains, hills, heaths, moors, forests, chases, or other wastes, shall presume to burn, between the 2d of February and 24th of June, any grig, ling, heath, furze, goss, or fern, upon pain that the offender or offenders, shall be committed to the house of correction for any time not exceeding one month, and not less than ten days, there to be whipped and kept to hard labour."

The subsequent act of the 28 Geo. 2. c. 19. s. 3. does not affect to repeal the above mentioned clause; but, merely reciting that the laws then in being were not sufficient to prevent the offences, enacts, "That if any person or persons, not having a right or legal licence to do the same, shall, after the 1st August, 1755, set fire to, burn, or destroy, or shall abet, aid, or assist in or at the burning or destroying of any goss, furze, or fern, growing or being in or upon any forest or chase within England, without the licence or consent of the owner or proprietor, or the person chiefly entrusted with the care, oversight, and custody of such forest or chase; or some part thereof," &c.

The statute then proceeds to give a summary jurisdiction to one or more justices of the peace, to convict the person so offending in a certain penalty, and to commit him to gaol in default of payment for a given time.

*Cutting Hop-binds.*

By 6 Geo. 2. c. 37. s. 6. it is enacted, "That if any person or persons, during the continuance of the 9 Geo. 1. c. 22. (which is made perpetual by 31 Geo. 2. c. 42.) shall unlawfully and maliciously cut any hop-binds growing on poles, in any plantation of hops, every person or persons so offending shall suffer death *without benefit of clergy*. (1)

† *Sect. 2.* By 10 Geo. 2. c. 32. s. 4. it is enacted, "That all the provisions in 9 Geo. 1. c. 22. for the more speedy and easy bringing the offenders against the said act to justice, and the persons who shall conceal, aid, abet, or succour such offenders, and for making satisfaction and amends to all and every the person and persons, their executors and administrators, for the damages they shall have sustained or suffered by any offender or offenders against the said act, and for the encouragement of persons to apprehend and secure such offender and offenders, and for the better and more impartial trial of any indictment or information which shall be found, commenced or prosecuted for any of the offences committed against the said act, together with all restrictions, limitations, and

*Provisions of 9 Geo. 1. c. 22. in force, in case of offence against this act.*

(1) So much of this act as inflicts the punishment of death without benefit of clergy, is repealed by stat. 4 Geo. 4. c. 46., and the punishment substituted in lieu thereof, is, "at the discretion of the court, to be transported beyond the seas for

"life, or for any term not less than seven years, or to be imprisoned only; or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years."



and mitigations by the said act directed, shall, during the continuance of the said act, extend to and be of force and effect in all cases of offences committed by unlawfully and maliciously breaking down or cutting down the bank or banks of any river, or any sea bank, whereby any lands shall be overflowed or damaged, or by unlawfully and maliciously cutting any hop-binds growing on poles in any plantation of hops, or by wilfully and maliciously setting on fire, or causing to be set on fire, any mine, pit, or delph of coal, or cannel coal."

*Destroying Head or Mound of a Fish-pond.*

By stat. 9 Geo. 1. c. 22. s. 1. it is enacted, "If any person or persons, after 1st of June, 1723, shall unlawfully and maliciously break down the head or mound of any fish-pond, *whereby the fish shall be lost or destroyed*, or shall forcibly rescue any person being lawfully in custody of any officer or other person, for any the offences before mentioned, or if any person or persons shall, by gift or promise of money or other reward, procure any of his majesty's subjects to join him "or them in any such unlawful act; every person so offending, "being thereof lawfully convicted, shall be adjudged guilty of "felony, and shall *suffer death as in cases of felony, without benefit of clergy*." Clergy is also ousted from offenders not surrendering on proclamation, and from such as aid, conceal, abet, or succour them, after the time for their surrender has expired.

The punishment is mitigated by the subsequent stat. 4 Geo. 4. c. 54. and a lighter one substituted, viz. "At the discretion "of the court to be transported beyond the seas for the term of "seven years, or to be imprisoned only, or to be imprisoned and "kept to hard labour in the common gaol or house of correction "for any term not exceeding three years." The like punishment is also inflicted on those procuring, counselling, aiding, or abetting the commission of the offence.

Thomas Ross was indicted for unlawfully, maliciously, and feloniously breaking down the head and mound of two fish-ponds, *whereby the fish therein were lost and destroyed*. By the evidence it clearly appeared, that the intention of the offenders was to *steal* the fish, and that the mounds were broken down to let off the water, by which method the fish were the more easily taken; and there was no evidence that the fish were lost or destroyed by escaping through the breach. The judges held the conviction wrong, as the *stealing* of fish was provided for by another clause of the black act; and if it were originally within that act, it was provided for by the subsequent stat. of 5 Geo. 3. c. 14. (a) And to bring it within the black act, the breaking down the pond head must be done from motives of malice. 2 E. 1067.

(a) Vide ante, p. 193.

*2. Coal Mines.*

By 10 Geo. 2. c. 32. it is enacted, "That if any person or "persons shall wilfully and maliciously set on fire, or cause to "be set on fire, any mine, pit, or delph of coal, or cannel coal, "every person so offending, being thereof lawfully convicted, "shall be adjudged guilty of felony, and shall suffer death as in "cases of felony, without benefit of clergy."

† Sect.

† Sect. 2. By 13 Geo. 2. c. 21. IT IS RECITED, "That it is reasonable that an adequate punishment should likewise be inflicted on persons who shall wilfully and maliciously destroy or damage collieries by means of water as aforesaid;" AND ENACTED, "That if any person shall unlawfully, wilfully, and " maliciously divert, or cause to be diverted, water from any " river, brook, water-course, channel, or land flood, or convey, " or cause to be conveyed, water into any coal work, mine, pit, " or delph of coal, or into any subterraneous cavities or passages, " or make, or cause to be made, any subterraneous cavities or " passages, with design thereby to destroy or damage any coal " work or mine, pit, or delph of coal belonging to any other person or persons, or shall, for that purpose, unlawfully, wilfully, " and maliciously destroy or obstruct any sough or sewer (which " has been a sough or sewer in common for fifty years) made for " draining any coal work, mine, pit, or delph of coal, or shall " attempt or continue any such mischievous practice, or shall aid " or assist therein in manner aforesaid; every such person shall, " for every such offence, forfeit and pay to the party or parties " aggrieved, treble damages and full costs of suit, to be sued for " and recovered by action of debt, bill, plaint, or information, in " any of his majesty's courts of record at *Westminster*." (1)

Persons drowning coal-pits, shall pay treble damages, and full costs.

† Sect. 3. By 13 Geo. 2. c. 21. s. 2. it is provided, "That " nothing in this act contained shall prevent or restrain, or be " construed to prevent or restrain, any person or persons, being " the owner or owners of any sough, drain, or sewer, from destroying, obstructing or diverting, using or disposing of any " such sough, drain, or sewer, in such manner as he, she, or they " respectively may now lawfully do."

Except such drains, sewers, &c. are their own.

For the further protection of this and other mining property, the stat. 9 Geo. 3. c. 29. s. 3. enacts, "That if any person or " persons shall at any time after the first of July, 1769, wilfully " or maliciously set fire to, burn, demolish, pull down, or otherwise destroy, or damage any fire-engine or other engine, erected " or to be erected for draining water from collieries or coal " mines, or for drawing coals out of the same; or for draining " water from any mine of lead, tin, copper, or other mineral; or " any bridge, waggon way, or trunk, erected or to be erected for " conveying coals from any colliery or coal mine, or staith for " depositing the same; or any bridge or waggon-way erected or " to be erected for conveying lead, tin, copper, or other mineral, " from any such mine; every such person being lawfully convicted of any of the said offences, or of causing or procuring " the same to be done, shall be adjudged guilty of felony, and " shall be liable to the same pains and penalties as in cases of " felony; and the court before whom such person shall be tried " shall have authority to transport such felon for the term of " seven years, in like manner as other felons are directed to be, " &c."

Sect. 4. provides that no person shall be prosecuted for any offence

(1) There is a singular difference in the punishments imposed by these two statutes: setting fire to the mine is felony without benefit of clergy, but

drowning it is punished with only treble damages to the party injured, and full costs of suit.

offence by virtue of this act, " unless such prosecution be commenced within eighteen months after the offence committed."

Again by stat. 39 and 40 Geo. 3. c. 77. s. 1. entitled " An act for the security of collieries and mines, and for the better regulation of colliers and miners;" reciting that " from the situation of the veins and mines of coal and iron stone, they are greatly exposed to the depredations of evil disposed persons, and the laws in being are inadequate to the protection thereof;" enacts, " That if any person or persons shall, after the first of September, 1800, wilfully and maliciously pull down, fill up, or begin " or attempt to pull down, or fill up, any air way, water way, " drain, pit, level, or shaft, or damage or destroy any rail way, " train-road,\*or other road leading to or from, or intended to " lead to or from any coal or other mine work; or if any person or persons (not having a *bonâ fide* claiming a right to possess or work the same respectively), shall, after the said time, wilfully and unlawfully cut, dig, raise, take, or carry away any coal, culm, or other mineral, from any bed, band, vein, or mine, lying and being in any waste, open or uninclosed lands; or shall wilfully and unlawfully enter into any level, pit, or shaft, with an intent to dig, cut, raise, take, or carry away therefrom any coal, culm, or other mineral; or shall aid, abet, assist, hire, or command any person or persons to commit any such offence or offences as aforesaid, then and in every such case all and every such person or persons shall be deemed and adjudged guilty of a misdemeanor, and the court before whom any such person or persons shall be tried and convicted shall have authority to cause such person or persons to be imprisoned for any term not exceeding six months."

" Provided (by s. 2.) this shall not extend to any trespass or damage done or committed under ground by any owner or owners of any adjoining coal, or other mine, in working the same, or by any person or persons duly authorised and employed in such working as aforesaid."

By s. 9. " No person shall be prosecuted for any offence against this act, unless such prosecution be begun within nine calendar months after the offence committed."

### *Manufactures.*

Linen.

By 4 Geo. 3. c. 37. s. 16. it is enacted, " That whoever shall " break into any house, shop, cellar, vault, or other place or " building, or by force enter into any house, shop, cellar, vault, " or other place or building, with intent to steal, cut, or destroy " any linen yarn, or any linen cloth, or any manufacture of linen " yarn, belonging to *any* manufactures, or the looms, tools, or " implements used therein; or shall wilfully or maliciously cut " in pieces or destroy any such goods, either when exposed to " bleach or dry, shall suffer as in cases of felony without benefit " of clergy." But this act shall not extend to *Scotland or Ireland*.

† Sect. 2. By 22 Geo. 3. c. 40. s. 1. it is further enacted, " That

“ That whoever shall, by day or by night, break into any house Woollen.  
 “ or shop, or enter by force into any house or shop, with intent  
 “ to cut or destroy any serge, or other woollen goods in the loom,  
 “ or any tools employed in making thereof; or shall wilfully and  
 “ maliciously cut or destroy any such serges or woollen goods in  
 “ the loom or on the rack; or shall burn, cut, or destroy any  
 “ rack on which any such serges, or other woollen goods are  
 “ hanged in order to dry; or shall wilfully and maliciously break  
 “ or destroy any tools used in the making any such serges or  
 “ other woollen goods, not having the consent of the owner so to  
 “ do, shall be guilty of felony without benefit of clergy.”

By 28 Geo. 3. c. 55. s. 4. it was enacted, “ That if any person Knitting frames.  
 “ or persons shall, by day or by night, enter by force into any  
 “ house, shop, or place, with an intent to cut or destroy any  
 “ frame-work knitted pieces, stockings, or other articles or goods  
 “ being in the frame, or upon any machine or engine thereto an-  
 “ nexed, or therewith to be used or prepared for that purpose;  
 “ or shall wilfully and maliciously cut or destroy any frame-work  
 “ knitted pieces, stockings, or other articles or goods being in the  
 “ frame, or upon the machine or engine as aforesaid, or prepared  
 for that purpose; or shall wilfully and maliciously break, de-  
 stroy, or damage any frame, machine, engine, tool, instrument,  
 or utensil, used in and for the working and making of any such  
 frame-work knitted pieces, stockings, or other articles or goods  
 in the hosiery or frame-work knitted manufactory, not having  
 the consent of the owner so to do, or break or destroy any ma-  
 chinery contained in any mill or mills used or any way employed  
 in preparing or spinning of wool or cotton for the use of the  
 stocking frames; every offender, being thereof lawfully con-  
 victed, shall be adjudged guilty of felony, and shall be trans-  
 ported to some of his majesty’s dominions beyond seas, for any  
 space or term of years not exceeding fourteen years, nor less  
 than seven years.”

But the 4 Geo. 4. c. 46. reciting the former acts of the 4 Geo. 3.  
 c. 37. 22 Geo. 3. c. 40. and 28 Geo. 3. c. 55. repeals the whole of  
 the 22 Geo. 3., (except so much of it as repealed former acts,) and  
 so much of the 4 Geo. 3. and 28 Geo. 3. as create felonies “ in  
 damaging or destroying manufactures, implements or machinery,”  
 and then enacts, “ If any person shall by day or by night break into  
 “ any house, shop, or building, or enter by force into any house,  
 “ shop, or building, with intent to cut, break, destroy, or damage  
 “ in the loom or frame, or on any machine or engine annexed  
 “ thereto, or on the rack or tenters, any woollen, silk, linen, or  
 “ cotton goods, or any goods of any one or more of those mate-  
 “ rials mixed with each other, or mixed with any other material;  
 “ or to cut, break, destroy, or damage any other article of the  
 “ woollen, silk, linen, or cotton manufactures in the loom, or  
 “ frame, or on any machine or engine annexed thereto, or on the  
 “ rack, or tenters; or to cut, break, destroy or damage, any  
 “ warp or shute of woollen, silk, linen or cotton, or of any one or  
 “ more of those materials mixed with each other, or mixed with  
 “ any other material, or any frame work, knitted piece, stocking  
 “ hose, or lace; or to burn, break, cut, destroy or damage any  
 VOL. I. Z “ loom,

“loom, frame, machine, engine, rack, tool, tackle, utensil, instrument, or implement, whether fixed or moveable, prepared for, or employed in, carding, spinning throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles; or shall wilfully and maliciously and without lawful authority, cut, break, destroy, or damage, any such woollen, silk, linen, cotton, or mixed goods, or articles in the loom or frame, or on any machine or engine annexed thereto, or on the rack or tenters; or burn, break, cut, destroy or damage, any such loom, frame, machine, engine, rack, tool, tackle, utensil, instrument, or implement as aforesaid, every person so offending shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding seven years.

*To Public Works.*

*Powdike.*

2 and 3 Ph. &  
M. c. 12.

By 22 Hen. 8. c. 11. which was repealed by 1 Edw. 6. and revived by 2 and 3 Philip and Mary, c. 19. IT IS RECITED, “That divers evil disposed persons, of their perverse and evil disposition, maliciously, at divers and sundry times, have cut, cast down, and broken up divers parts of the dike called the new powdike in marsh-land in the county of *Norfolk*, and the broken dike, otherwise called *Oldfield* dike, by marsh-land in the isle of *Ely* within the county of *Cambridge*; by reason whereof, as well by the great abundance of the salt water, as also by the course of the fresh water entering and coming into and by the said parts of the said ditches so broken and cast down, the ground and pastures within the country of marsh-land, in the counties aforesaid, have been divers and many times drowned and surrounded with the waters aforesaid, so that no profit thereof might be taken by the owners and occupiers of the said ground and pastures within marsh-land aforesaid; by the drowning whereof the said owners and occupiers of the said ground, and the inhabitants within the said marsh-land, and the level of the same, at many and sundry times have been not only put to importunate charges and expences, to their extreme damages and costs, but also, to their great undoing, have lost much of their cattle and beasts, then being and pasturing upon and within marsh-land aforesaid, to their great damage and loss, and to the great decay of the common weal of the countries adjoining to the same; and also by reason of the same waters much people have been drowned in their beds within their houses, and have lost the most part of their goods being within the same:” for the reformation whereof it is ENACTED, “That every such perverse and malicious cutting down and breaking up of any part or parts of the said dikes, or of any other bank, being parcel of the rind and uppermost part of the said country of marsh-land aforesaid, made for the defence and salvation of the same country of marsh-land, at every time and times from henceforth by any person or persons committed and done, otherwise than in working upon the said banks or dikes, for the repairing, fortifying, and mending

Cutting down  
or breaking up  
of dikes in  
marsh-land is  
felony.

“ing of the same, be taken, reputed, and adjudged felony, and  
 “that the offenders and doers of the same, and every of them,  
 “be adjudged and reputed felons. And that the justices of the  
 “peace of the said counties of *Norfolk* and *Cambridge*, within  
 “the said isle, at every of their sessions within the same isle and  
 “counties to be kept, by the authority aforesaid, have full power  
 “to cause inquiry to be made of every such offence, so at any  
 “time, in form aforesaid, hereafter to be committed and done,  
 “and to award like process against every of the said offenders,  
 “with like judgment and execution of the same, if they or any  
 “of them be thereof found guilty by verdict or otherwise, as the  
 “said justice hath used and accustomed to do upon other felo-  
 “nies, being felony at the common law.”

Justices of the  
 peace to inquire  
 of offenders and  
 award process,  
 &c.

*Sea and River Banks.*

† *Sect. 1.* By 6 Geo. 2. c. 37. made perpetual by 31 Geo. 2. c. 42. “Whoever shall unlawfully and maliciously break down  
 “or cut down the bank or banks of any river, or any sea-bank,  
 “whereby any lands shall be overflowed, or damaged, shall suffer  
 “death without clergy.” (a)

(a) Repealed, as  
 to taking away

clergy, by 4 Geo. 4. c. 46.; and other punishments, viz. transportation, imprisonment with or without hard labour, in discretion of court, substituted.

† *Sect. 2.* By 8 Geo. 2. c. 20. made perpetual by 27 Geo. 2. c. 16. “Whoever shall wilfully or maliciously pull down, pluck  
 “up, throw down, level, or otherwise destroy any lock, sluice,  
 “floodgate or other works, on any navigable river erected by  
 “authority of parliament; or forcibly rescue any person or per-  
 “sons in lawful custody for the same, shall suffer death without  
 “benefit of clergy.” The offence may be tried in any adjacent  
 county, but without corruption of blood, &c.

† *Sect. 3.* It is also enacted by the said statute, par. 2. “That  
 “whoever shall wilfully and maliciously draw or pluck up any  
 “floodgate, fixed or made in any wear or lock erected by autho-  
 “rity of parliament, in or upon any navigable river, for pre-  
 “serving the navigation thereof, on conviction by one witness,  
 “before two justices of that or of the adjacent county, shall be  
 “sent to hard labour for one month in the house of correction;  
 “—and the hundred made liable, to the amount of twenty  
 “pounds, &c.”

† *Sect. 4.* And it is further enacted by 10 Geo. 2. c. 32. That whoever shall unlawfully cut off, draw up, or remove and carry away any piles, chalk, or other materials which shall be driven into the ground and used for the securing any marsh, or sea-walls or banks, in order to prevent the lands, lying within the same, from being overflowed and damaged, shall forfeit twenty pounds; one moiety to the informer, the other to the poor; and in default, by distress, shall be kept at hard labour for six months. Any one justice of the place, on information upon oath, may summon the offender to appear, or issue his warrant to apprehend him, and upon appearance, or non-appearance, may convict, on confession, or the oath of one witness.”

† *Sect. 5.* And it is further enacted by the above statute,  
 “That

"That all the provisions of the Black Act of 9 Geo. 1. c. 22. "for the bringing offenders, their aiders and abettors, to justice; "for making compensation to the party injured; for the reward "for apprehending offenders, &c. and for the more impartial "punishment of the offences therein mentioned; together with "all restrictions, limitations, and mitigations of the said act, shall "extend to all cases of offences by breaking down or cutting "down any bank or banks of any river, or any sea-bank, whereby "any lands shall be overflowed or damaged."

† Sect. 6. By 4 Geo. 3. c. 12. s. 5. which recites, "That the laws in being were not sufficient for the preservation of banks, floodgates, sluices, and other works belonging to navigable rivers," and thereupon it is enacted, "That whoever shall wilfully or maliciously break, throw down, damage or destroy any "banks, floodgates, sluices, or other works, or open or draw up "any floodgate, or do any other wilful hurt or mischief to any "navigation erected by authority of parliament, so as to obstruct, "hinder, or prevent the carrying on, completing, supporting, "or maintaining such navigation, may be transported for seven "years."

#### *Bedford Level.*

† Sect. 1. By 27 Geo. 2. c. 19. "Whoever shall maliciously "cut, break down, burn, demolish, or destroy any bank, mill, "engine, floodgate or sluice, erected, made, supported, or maintained for the purpose of benefiting the *Bedford Level*, shall "suffer death without (a) clergy." And further, "Whoever shall "maliciously stop, dam up, demolish, damage, or destroy any "river, drain, water-course, door, dam, bridge, or other works "erected for the purposes aforesaid, on conviction before two "justices for the counties and isles, or either of them, shall forfeit one hundred pounds."

(a) Repealed, as to the punishment of death, by 4 Geo. 4. c. 46. transportation, imprisonment, &c. substituted.

#### *West India Docks.*

By the act of the 39 Geo. 3. c. 69. for improving the port of London, it is enacted (s. 4.), "That if any person or persons "whosoever shall wilfully and maliciously set on fire any of the "works to be made by virtue of this act, or any ship or other "vessel lying or being in the said canal, or in any of the docks, "basins, cuts, or other works to be made by virtue of this act; "every person so offending in any of the said cases shall be "adjudged guilty of felony, without benefit of clergy. And if "any person or persons shall knowingly, wilfully, or maliciously "demolish, break down, cut, or destroy any of the works to be "made by virtue of this act, or any ship or vessel lying in the "said canal, or in any of the said docks, basins, cuts, or other "works; then every such offender, being convicted thereof, shall "suffer punishment by fine, imprisonment, or transportation, at "the discretion of the judge, &c. before whom such offender "shall be tried and convicted."

#### *Destroying Turnpike Gates.*

By stat. 3 Geo. 4. c. 126. 128. it is enacted, "That if any "person

“ person or persons whatsoever shall wilfully or maliciously pull down, pluck up, throw down, level, or otherwise destroy or damage any turnpike-gate, or any chain, rail, post, or bar, or other fence or fences belonging to any turnpike-gate, or any other chain, bar, or fence of any kind whatsoever, set up or erected, or hereafter to be set up or erected to prevent passengers passing by without paying any toll directed to be paid by any act or acts of parliament relating thereto, or any house or houses erected or to be erected for the use of any such turnpike-gate or turnpike-gates, or any weighing engine; or shall forcibly rescue any person or persons being lawfully in custody of any officer or other person for any of the offences before-mentioned; then and in any of the said cases, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be transported to one of his majesty’s plantations abroad for seven years, or, in mitigation thereof, shall suffer such other punishment as the court may direct, as in cases of petit larceny.

“ In case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this act, or any particular act made for amending any turnpike road, or shall assault any surveyor or any collector or collectors of the tolls, in the execution of his or their office or offices, or shall pass through any turnpike gate or gates, rail or rails, chain or chains, or other fence or fences set up or to be set up by authority of parliament, without paying the toll appointed to be paid at such gate or other fence, or shall hinder or make any rescue of cattle or other goods distrained by virtue of this act, every such person offending therein, shall, for every such offence, forfeit any sum not exceeding £10, at the discretion of the justice or justices of the peace before whom he or she shall be convicted.”

#### *Of Maiming Cattle.*

† Sect. 1. By 37 Hen. 8. c. 6. “ Whoever shall maliciously, unlawfully, and willingly cut out, or cause to be cut out, the tongue or tongues of any tame beast or beasts of any other person or persons, the said beast then being in life, shall forfeit treble damages to the party grieved, by action of trespass, and ten pounds to the king, in the name of a fine.”

† Sect. 2. By 22 and 23 Car. 2. c. 7. IT IS RECITED, “ That divers evil-disposed persons, intending the ruin and impoverishment of their fellow-subjects, had secretly in the night-time, and at other times when they thought their deeds were not known, practised the unlawful and wicked courses of cutting, maiming, wounding, and killing of horses, sheep, beasts, and other cattle,” AND ENACTED, for prevention thereof, “ That when, in any part of this kingdom, any person or persons shall in the night-time maliciously, unlawfully, and willingly kill, or destroy any horses, sheep or other cattle, of any person or persons whatsoever, every such offence shall be adjudged felony, and the offenders and every of them shall suffer as in case of felony.”

† Sect.



† Sect. 3. By 22 and 23 Car. 2. c. 7. s. 3. it is provided,  
 “ That no attainder for such offence shall work any corruption of  
 “ blood, loss of dower, or disinheritance of heir or heirs.”

The party at li-  
 berty to be  
 transported for  
 seven years.

† Sect. 4. By 22 and 23 Car. 2. c. 7. s. 4. it is further ENACTED,  
 “ That in case any person or persons who shall be convict or  
 “ attainted of felony aforesaid, (to avoid judgment of death, or  
 “ execution thereupon for such his offence,) shall make his elec-  
 “ tion to be transported beyond the seas, to any of his majesty’s  
 “ plantations; that then the justices of assize, *oyer* and *terminer*,  
 “ gaol-delivery, or justice of the peace, before whom such of-  
 “ fender shall be convict or attain by virtue of this act, and every  
 “ of them respectively, shall cause judgment to be entered against  
 “ every such offender, that he be transported beyond the seas to  
 “ some of his majesty’s plantations, in the said judgment to be  
 “ particularly mentioned and expressed, there to remain for the  
 “ space of seven years; and that, in pursuance of the said judg-  
 “ ment, the sheriff or sheriffs of the county or city where such  
 “ offender shall be so convict or attainted, shall cause the said  
 “ offender to be safely conveyed and embarked to be transported  
 “ as aforesaid; and if any such offender shall return into this  
 “ kingdom before the expiration of the said seven years, he shall  
 “ suffer death as a felon, and as if no such election to be trans-  
 “ ported had been made by him.”

Felony to return  
 before.

Treble damages  
 for maiming cat-  
 tle, throwing  
 down of inclo-  
 sures, &c. in the  
 night-time.

† Sect. 5. By 22 and 23 Car. 2. c. 7. s. 5. it is further ENACTED,  
 “ That if any person or persons shall in the night-time mali-  
 “ ciously, unlawfully, and willingly maim, wound, or otherwise  
 “ hurt any horses, sheep, or other cattle, whereby the same shall  
 “ not be killed or utterly destroyed, or shall destroy any plantations  
 “ of trees, or throw down any inclosure, in manner aforesaid;  
 “ that then every such offender or offenders shall lose and forfeit  
 “ unto the party grieved treble the damage which he or they shall  
 “ thereby sustain; the same to be recovered by action of trespass,  
 “ or upon the case, to be taken at the common law.”

Justices power  
 to inquire of the  
 offence, and  
 punish the of-  
 fenders.

† Sect. 6. By 22 and 23 Car. 2. c. 7. s. 6. it is further ENACTED,  
 “ That upon the complaint and request of the party or parties  
 “ injured in any such manner, any three or more justices of the  
 “ peace for the county, division, city, town corporate, or place  
 “ where such offence shall be committed, whereof one to be of  
 “ the *quorum*, shall and may, and they are thereunto authorised  
 “ and required by virtue of this act, to inquire, as well by the  
 “ oaths of twelve lawful men or more of the same county as by  
 “ examination of witnesses upon oath, or by any lawful ways or  
 “ means which to them shall seem meet, of and concerning any  
 “ the offences before incurred, and offenders therein; and in  
 “ order thereunto, to issue out warrants, as well for the summon-  
 “ ing of jurors, as for the apprehending of all such persons as  
 “ shall or may be thereof suspected, and to take their examina-  
 “ tion touching the same; as also to cause all such other persons  
 “ as to them shall seem likely to make discovery thereof, to ap-  
 “ pear before them, and to give information upon oath, of and  
 “ concerning their knowledge of the premises; so as no person  
 “ so

"so to be examined by the said justices of the peace, shall be convicted, or in any wise proceeded against, for or by reason of any offence concerning which he or they shall be so examined as a witness, and shall upon such his examination make a true discovery thereof: And in case any person or persons, who by the said justices be thought likely to make discovery as aforesaid, shall refuse to appear, or to be examined as a witness, being duly summoned by the said justices in pursuance of this act; it shall and may be lawful for the said justices of the peace to commit the party so refusing, to the common gaol for the said county without bail or mainprize, until he shall submit to be examined upon oath, of and concerning his knowledge touching the same offence, or the offenders by whom the same was committed."

A witness refusing to appear, shall be committed to prison.

† Sect. 7. By 22 and 23 Car. 2. c. 7. s. 7. it is provided, "That no person who shall be punished for any offence by virtue of this act, shall be punished for the same offence by virtue of any other act or law whatsoever; nor shall be questioned for the same, unless he be proceeded against within six months after the offence committed."

No person shall be twice punished for this offence. Prosecution must be within 6 months.

† Sect. 8. By 9 Geo. 1. c. 22. IT IS ENACTED, "That if any person or persons shall unlawfully and maliciously kill, maim, or wound any cattle; or shall forcibly rescue any person in lawful custody for the same; or shall by gift, or promise of money, or other reward, procure any of the king's subjects to join him or them in such unlawful act; every person so offending shall suffer death, without benefit of clergy." And by 22 Eliz. c. 13. the hundred are liable to the amount of £200.

Vide 4 Geo. 4. c. 54. Post, 344.

† Sect. 9. It hath been determined, that the statute 9 Geo. 1. c. 22. is to be considered as an extension of the provisions of the 22 and 23 Car. 2. c. 7.

Cases in Cro. Law, 68.

† Sect. 10. It hath also been determined, that although "cattle" is the only word used in the 9 Geo. 1. c. 22. yet an indictment thereon for shooting a mare and "a stone colt" is good, although it do not aver them to be *cattle* within the meaning of the act.

Rex v. Paty, Cases Cro. Law, 66. 2 Black. 722.

† Sect. 11. It hath also been determined, that if *A.* and *B.* be indicted on the statute 9 Geo. 1. c. 22. for unlawfully, maliciously and feloniously killing a mare, and it appear in evidence that *A.* with the assistance of *B.* caught the mare in the field where she was grazing, and fastened a rope about her neck, and that *B.* took hold of the rope and held it straight in order to prevent the mare getting away, or starting from the blow, while *A.* with a large sharp hook called a *bill*, gave the mare a deep wound in the belly, of which she died, that they are both equally guilty, and ousted of their clergy by the statute, although the act doth not by any express provisions take in aiders and abettors (*a*).

The case of John Midwinter and Rich. Simms. Gloucester Lent assizes 1749, on a case reserved for the opinion of the Judges, Foster C.L. 415. See also S. C. cited by Lord Mansfield, Rex v. Royce, 4 Burr. 2075. Cases C. L. 62. (*a*) But

see the propriety of this decision very ably controverted by Mr. Justice Foster in his case, Foster's Cro. Law, App. 416.

The punishment of death without benefit of clergy is repealed by statute of 4 Geo. 4. c. 54.; which also alters a ruling which had

had taken place in the construction of this act. It had been held in several cases, that the mischief to the animal must be done from motives of malice "*against the owner.*" But the statute of 4 Geo. 4. ENACTS, "if any person shall unlawfully and maliciously kill, maim " or wound any cattle, *whether from malice conceived against the " owner or otherwise,* or of procuring, counselling, aiding or abetting thereof, shall be liable, at the discretion of the court, to be " transported beyond the seas for life, or for such term not less " than seven years, as the court shall adjudge, or to be imprisoned " only, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, for any term not exceeding " seven years."

No indictment lay at common law for killing or wounding cattle, but it was a mere trespass, for which the party injured had his remedy by civil action. Dan. Ranger was indicted at common law on an indictment which charged him on the 23d May, 33 Geo. 3. *with force and arms,* at, &c. one black gelding of the value of £30, of the goods and chattels of William Collyer, unlawfully did maim, to the damage, &c. and against the peace, &c. But the judges held that the indictment contained no indictable offence. For if the offence were not within the black act, the fact itself was only a trespass, and that the "*force and arms alleged in the indictment,* was no more than the allegation in " every declaration of trespass." 2 E. P. C. 1074.

#### *Burning Heaps of Wood prepared for Coals, &c.*

By stat. 37 Hen. 8. c. 6. "If any person or persons maliciously, " willingly, or unlawfully do burn, or cause to be burned, any " heap or heaps of wood of any other person or person, prepared, " cut, and felled, or to be prepared, cut, or felled, for making of " coals, billets, or talwood ; then every such offender and offenders shall not only lose and forfeit unto the party grieved treble " damages for such offence or offences, (the same to be recovered " by action of trespass,) but also shall forfeit to the king, for every " such offence, £10, in the name of a fine."

The offence herein described seems, by the preamble, to be pointed at such as commit it from a motive of malice to the owner of the property : for it recites that " malicious and envious persons, being men of evil and perverse dispositions, &c. and minding the hurt, undoing, and impoverishment of true and faithful subjects, have of late invented a new damnable kind of vice, &c. and damnifying of the king's true subjects, &c. in committing such and such offences."

#### *Burning Wains or Carts laden with Goods.*

The last mentioned statute subjects to the same punishment, " any person or persons who shall maliciously, wilfully, and unlawfully burn or cause to be burned any wain or cart laden or " to be laden with coals or any other goods or merchandizes of " any other person or persons."

#### *Destroying*

*Destroying Granaries, and Waggon laden with Corn, Scattering Grain, &c.*

By 11 Geo. 2. c. 22. IT IS ENACTED, "That whoever shall wilfully and maliciously beat, wound, or use any other violence to or upon any person or persons, with intent to deter or hinder him or them from buying of any corn or grain in any market, or other place within this kingdom; or shall unlawfully stop or seize upon any waggon, cart, or other carriage, or horse loaded with wheat, flour, meal, malt, or other grain, in or on the way to or from any city, market-town, or sea-port of this kingdom, and wilfully and maliciously break, cut, separate, or destroy the same, or any part thereof, or the harness of the horses drawing the same; or shall unlawfully take off, drive away, kill, or wound any such horses, or unlawfully beat or wound the driver or drivers of such waggon, cart, or other carriage, or horse so loaded, in order to stop the same; or shall, by cutting of the sacks, or otherwise, scatter or throw abroad such wheat, flour, meal, malt, or other grain, or shall take, or carry away, spoil, or damage the same, or any part thereof; on conviction by two justices of the peace, or at sessions, shall be sent to the common gaol or house of correction, to hard labour, not exceeding three months, nor less than one, and be once publicly whipped during the said confinement."

1st offence imprisonment and public whipping.

† Sect. 2. By 11 Geo. 2. c. 22. s. 2. it is further ENACTED, "That if any such person or persons so convicted shall commit any of the offences aforesaid a second time, or if any person or persons shall wilfully and maliciously pull, throw down, or otherwise destroy any store-house or granary, or other place where corn shall be then kept, in order to be exported; or shall unlawfully enter any such store-house, granary, or other place, and take and carry away any corn, flour, meal, or grain therefrom, or shall throw abroad or spoil the same, or any part thereof; or shall unlawfully enter on board any ship, barge, boat, or vessel, and shall wilfully and maliciously take and carry away, cast, or throw out therefrom, or otherwise spoil or damage any meal, flour, wheat, or grain therein, intended for exportation; every person so offending shall, on conviction, be transported for seven years; and if such convict shall return, &c. he shall suffer death as a felon, without benefit of clergy; but without corruption of blood, loss of dower, or disinherittance."

2d offence transportation for seven years.

Destroying granary, &c. or entering ship, and spoiling meal, flour, &c. transportation for seven years.

*Destroying Ships.*

† Sect. 1. By 22 and 23 Car. 2. c. 11. s. 12. IT IS RECITED, "That whereas it often happeneth that masters and mariners of ships having insured or taken upon bottomry greater sums of money than the value of their adventure, do wilfully cast away, burn, or otherwise destroy the ships under their charge, to the merchants' and owners' great loss; for the prevention thereof for the future," IT IS ENACTED, "That if any captain, master, mariner, or other officer belonging to any ship, shall wilfully cast away, burn,

Felony for any officer or other person wilfully to destroy any ship.

"burn, or otherwise destroy the ship unto which he belongeth, or procure the same to be done, he shall suffer death as a felon."

Captain, master, &c. wilfully casting away or burning, &c. any ship, shall suffer death.

† *Sect. 2.* By 1 Ann. st. 2. c. 9. s. 4. IT IS ENACTED, "That if any captain, master, mariner, or other officer belonging to any ship, shall wilfully cast away, burn, or otherwise destroy the ship unto which he belongeth, or procure the same to be done, to the prejudice of the owner or owners thereof, or of any merchant or merchants that shall load goods thereon, he shall suffer death as a felon."

Any owner, &c. wilfully destroying any ship to the prejudice of the insurers, shall suffer death.

† *Sect. 3.* By 4 Geo. 1. c. 12. s. 3. IT IS ENACTED, "That if any owner of, or captain, master, mariner, or other officer belonging to any ship shall wilfully cast away, burn, or otherwise destroy the ship of which he is owner, or unto which he belongeth, or in any manner or wise direct or procure the same to be done, to the prejudice of any person or persons that shall underwrite any policy or policies of insurance thereon, or of any merchant or merchants that shall load goods thereon, he shall suffer death."

Wilfully destroying ships, death.

† *Sect. 4.* By 11 Geo. 1. c. 29. s. 6. IT IS RECITED, "That whereas some doubts have arisen touching the nature of the offence provided against by the said recited act, and the trial and punishment to be had and inflicted for the same," it is therefore ENACTED, "That if any owner of, or captain, master, officer, or mariner belonging to any ship or vessel, shall wilfully cast away, burn, or otherwise destroy, the ship or vessel of which he is owner, or to which he belongeth, or in any wise direct or procure the same to be done, with intent or design to prejudice any person or persons that hath or shall underwrite any policy or policies of insurance thereon, or of any merchant or merchants that shall load goods thereon, or of any owner or owners of such ship or vessel, the person or persons offending therein being thereof lawfully convicted, shall be deemed and adjudged a felon or felons, and shall suffer as in cases of felony without benefit of clergy."

Pow's case, Cases Crown Law, 42.

*Sect. 5.* It hath been determined, on an indictment against two persons as principals and another as accessory before the fact, for unlawfully burning and destroying a ship, that if it appear that the person charged as accessory was neither owner, master, captain, nor mariner of the vessel burned, he is not an offender within the above statutes.

At the Admiralty sessions, in October, 1802, G. Easterby and W. Macfarlane were convicted, as accessaries before the fact, of procuring the brig *Adventure* to be feloniously lost upon the high seas. It appeared that they concerted the loss of the ship with the master, Codlin, who effected it; but that neither Easterby nor Macfarlane was on board the ship at sea, within the jurisdiction of the Admiralty. The court, upon a case reserved, held the trial improper before the court of Admiralty, and the parties were pardoned. (Addenda to East, P. C. xxvii.)

Upon

Upon the construction of the acts of 4 and 11 Geo. 1. it has been ruled that if a ship be only run aground or stranded upon a rock, and be afterwards got off in a condition capable of being easily refitted, she cannot be said to be cast away or destroyed, and therefore is not within either of these statutes. Upon this distinction, Augustin de Lindo, the master of a Spanish vessel called *El Principe de Espana*, was acquitted at an Admiralty sessions, holden before Sir Thomas Salusbury, and Yates and Aston, Justices. E. P. C. p. 1098.

*Plundering and Injuring Shipwrecks.*

By 12 Ann. st. 2. c. 18. s. 1. it is enacted, "That the sheriffs, justices of the peace of every county, or county of a city or town, and also all mayors, bailiffs, and other head officers of corporations and port-towns near adjoining to the sea, and all constables, headboroughs, tythingmen, and officers of the customs in all and every such places, shall, upon application made to them, or any of them, by or on the behalf of any commander, or chief officer of any ship or vessel of any of her majesty's subjects, or others, being in danger of being stranded or run on shore, or being stranded or run on shore, are hereby empowered and required to command the constables of the several ports within her majesty's dominions, nearest to the sea-coasts where any such ship or vessel shall be in danger as aforesaid, to summon and call together as many men as shall be thought necessary to the assistance and for the preservation of such ship or vessel so in distress as aforesaid, and their cargoes; and that if there shall be any ship or vessel, either man of war or merchant's ship, belonging to her majesty, or any of her subjects, riding at anchor near the place where such ship or vessel is in distress or danger as aforesaid, the officers of the customs, and constables above-mentioned, or any of them, are hereby empowered and required to demand of the superior officers of such ship or vessel so riding at anchor as aforesaid, assistance by their boats, and such hands as they can conveniently spare, for the said service and preservation of the said ship or vessel so in distress as aforesaid; and that in case such superior officer of such ship or vessel riding at anchor as aforesaid, shall refuse or neglect to give such assistance, he shall forfeit for the same the sum of one hundred pounds, to be recovered by the superior officer of the said ship or vessel so in distress as aforesaid, together with their costs of suit, in any of her majesty's courts of record, by action, debt, bill, plaint, or information, wherein no essoin, wager of law, or protection shall be allowed."

Sheriffs, mayors, &c. and custom-house officers to summon men to assist ships in distress.

All ships to assist,

on forfeiture of 100*l*.

† Sect. 2. By 12 Ann. st. 2. c. 18. s. 5. it is further enacted, "That if any person or persons shall make, or be assisting in the making, any hole in the bottom, side, or any other part of any ship or vessel so in distress as aforesaid, or shall steal any pump belonging to any ship or vessel so in distress as aforesaid, or shall be aiding or abetting in the stealing such pump as aforesaid, or shall wilfully do any thing tending to the immediate loss or destruction of such ship or vessel, such person or persons

Making holes in the ship, &c. felony.

“ persons shall be and are hereby made guilty of felony without benefit of his, her, or their clergy.”

Persons convicted of plundering ship-wrecked goods, &c. to suffer death.

† *Sect. 3.* By 26 Geo. 2. c. 19. it is enacted, “ That if any person or persons shall plunder, steal, take away or destroy any goods, or merchandizes, or other effects, from or belonging to any ship or vessel of his majesty’s subjects, or others, which shall be in distress, or which shall be wrecked, lost, stranded, or cast on shore in any part of his majesty’s dominions (whether any living creature be on board such vessel or not), or any of the furniture, tackle, apparel, provision, or part of such ship or vessel; or shall beat or wound with intent to kill or destroy, or shall otherwise wilfully obstruct the escape of any person endeavouring to save his or her life from such ship or vessel, or the wreck thereof; or if any person or persons shall put out any false light or lights with intention to bring any ship or vessel into danger; then such person or persons so offending shall be deemed guilty of felony, and being lawfully convicted thereof, shall suffer death as in cases of felony without benefit of clergy.”

Where goods of small value be stolen, petit larceny.

† *Sect. 4.* By 26 Geo. 2. c. 19. s. 2. it is provided, “ That when goods or effects of small value shall be stranded, lost, or cast on shore, and shall be stolen without circumstances of cruelty, outrage, or violence; then and in such cases it shall be lawful for any person or persons to prosecute for such offence by way of indictment for petit larceny; and the offenders being thereof lawfully convicted, shall suffer such punishment as the laws in cases of petit larceny do enjoin or require.”

Where oath shall be made of plunder, &c. contrary to 12 Ann. st. 2. c. 18. and examination be delivered to clerk of the peace, he is to prosecute.

† *Sect. 5.* By 26 Geo. 2. c. 19. s. 8. it is enacted, “ That if oath shall be made before any magistrate, lawfully empowered to take the same, of any such plunder or theft, and the examination in writing thereupon taken shall be delivered to the clerk of the peace of the county, riding, or division wherein such fact shall be committed, or to his deputy; or if oath shall be made before any such magistrate of the breaking any ship, contrary to the aforesaid act made in the twelfth year of the reign of her said late majesty queen *Anne*, and the examination in writing thereupon taken shall be delivered to such clerk of the peace or his deputy; then such clerk of the peace shall cause the offender or offenders in any the said cases to be forthwith prosecuted for the same, either in the county where the fact shall be committed, or in any county next adjoining; in which adjoining county any indictment may be laid by any other prosecutor; and if the fact be committed in *Wales*, then the prosecution shall or may be carried on in the next adjoining *English* county; and the necessary charges of such prosecutions by the clerk of the peace shall be paid by the treasurer of the county, riding, or division where the fact shall be committed, to such amount as the justices of the peace in their general or quarter-sessions shall order and ascertain the same; and if such clerk of the peace shall neglect or refuse to carry on such prosecution in due manner, he shall forfeit one hundred pounds for every such offence, to any person or persons who  
“ together

"shall sue for the same, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster; in which action no éssoin, protection, wager of law, or more than one imparlance shall be allowed."

† Sect. 6. By 26 Geo. 2. c. 19. s. 9. it is further enacted, "That the commissioners of the land-tax, the deputy-sheriff, the coroners of excise in each county, riding, and division, shall be proper officers for putting in execution this present act made in the twelfth year of the reign of her late majesty queen Anne, together with those therein respectively named for that purpose." Officers for putting this and 12 Ann. st. 2. c. 18. in execution.

† Sect. 7. By 26 Geo. 2. c. 19. IT IS RECITED, "That by an act made in the third year of his late majesty King George the First (intituled, *An act for the better regulating of pilots, for the conducting of ships and vessels from Dover, Deal, and the isle of Thanet, up the river of Thames and Medway*), it is enacted, that the lord warden of the Cinque Ports for the time being shall nominate and appoint, by an instrument under his hand and seal, three or more substantial persons in each of the Cinque Ports, two ancient towns and their members, to adjust and determine, within the space of twelve hours, differences which shall or may arise within the jurisdiction of the Cinque Ports, relating to the salvage of anchors and cables, from which vessels shall or may be forced by extremity of weather," and hereby ENACTED, "That the lord warden of the Cinque Ports for the time being, and the lieutenant of Dover-castle for the time being, and the deputy warden of the Cinque Ports for the time being, and the judge official and commissary of the court of admiralty of the Cinque Ports, two ancient towns, and the members thereof, for the time being, and all and every of them, and all and every other person and persons appointed or to be appointed by the lord warden of the Cinque Ports for the time being, pursuant to the said act made in the third year of his late majesty's reign, shall be the persons to put in execution, within the liberty and jurisdiction of the Cinque Ports, two ancient towns, and their members, all the powers and authorities given and granted in and by this act, and in and by the before mentioned act of parliament made in the twelfth year of her said late majesty queen Anne; and also in and by the said act made in the fourth year of the reign of his late majesty King George the First; and also shall and may execute, perform, and do, within the jurisdictions aforesaid, all the acts, matters, and things contained in this and the before mentioned statutes, in like and as full and ample manner, to all intents and purposes, as any justice or justices of peace, or any other person or persons, are by this and the said acts appointed or authorised to do in any other part of the kingdom." Officers for putting this and 12 Ann. in execution within the liberty of the Cinque Ports, &c.

† Sect. 8. It hath been decided, that an offence against these statutes committed in *Anglesea*, may be tried in *Shropshire*, as the next adjoining *English* county to *Anglesea*.

*Rex v. Parry and Roberts*, Salop Summer assizes, 1774, in a case reserved.

† Sect. 9. By 33 Geo. 3. c. 67. s. 5. (made perpetual by 41 Geo. 3. c. 19.) it is enacted, "That if any seaman or seamen, wilfully setting fire to any ship, keel- to suffer death ;



" keelman or keelmen, caster or casters, ship carpenter or ship  
 " carpenters, or other person or persons, shall wilfully and mali-  
 " ciously burn or set fire to any ship, keel, or other vessel, every  
 " person so offending, and being thereof lawfully convicted, in  
 " any court of *oyer and terminer*, to be holden in and for the  
 " county, shire, riding, division, or district wherein the offence  
 " was committed, shall be adjudged guilty of felony without  
 " benefit of clergy, and shall suffer death as in cases of felony  
 " without benefit of clergy."

and destroying  
 or damaging  
 them by any  
 other means, to  
 be transported.

† *Sect. 10.* By 33 Geo. 3. c. 67. s. 6, " it is further enacted,  
 " That if any seaman or seamen, keelman or keelmen, caster or  
 " casters, ship carpenter or ship carpenters, or other person or  
 " persons, shall wilfully and maliciously destroy or damage any  
 " ship, keel, or other vessel, (otherwise than by fire,) every sea-  
 " man, keelman, caster, ship carpenter, and other person so  
 " offending, and being thereof lawfully convicted upon any  
 " indictment to be found against him, her, or them; in any court  
 " of *oyer and terminer*, or general or quarter-sessions of the peace  
 " to be holden respectively in and for the county, shire, riding,  
 " division, or district wherein the offence was committed, shall  
 " be adjudged guilty of felony, and shall be transported to some  
 " of his majesty's dominions beyond the seas, for any space of  
 " time or term of years not exceeding fourteen years, nor less  
 " than seven years."

Prosecutions to  
 be commenced  
 within a year.

† *Sect. 11.* By 33 Geo. 3. c. 67. s. 8. it is provided, " That  
 " no person or persons shall be prosecuted by virtue of this act,  
 " for any of the offences aforesaid, unless such prosecution be  
 " commenced within twelve calendar months after the offence  
 " committed."

By 1 and 2 Geo. 4. c. 75. s. 11. " If any person or persons  
 " shall wilfully cut away, cast adrift, remove, alter, deface, sink or  
 " destroy, or shall do or commit any act with intent and design to  
 " cut away, cast adrift, remove, alter, deface, sink or destroy, or in  
 " any other way injure or conceal, any buoy, buoy rope or mark  
 " belonging to any ship or vessel, or which may be attached to any  
 " anchor or cable, belonging to any ship or vessel whatever,  
 " whether in distress or otherwise, such person or persons so of-  
 " fending shall, on being convicted of such offence, be deemed and  
 " adjudged to be guilty of felony, and shall be liable to be trans-  
 " ported for any term not exceeding seven years; or, in mitigation  
 " of such punishment, to be imprisoned for any number of years,  
 " at the discretion of the court in which the conviction shall be  
 " made."

" If any person shall, knowingly and wilfully, and with intent  
 " to defraud and injure the true owner or owners thereof, or any  
 " person interested therein as aforesaid, purchase or receive any  
 " anchors, cables, or goods or merchandize which may have been  
 " taken up, weighed, swept for, or taken possession of, whether  
 " the same shall have belonged to any ship or vessel in distress  
 " or otherwise, or whether the same shall have been preserved  
 " from any wreck, if the directions hereinbefore contained with  
 " regard to such articles shall not have been previously complied  
 " with,

“with, such person or persons shall, on conviction thereof, be deemed guilty of receiving stolen goods, knowing the same to be stolen, as if the same had been stolen on shore, and suffer the like punishment as for a misdemeanor at the common law, or be liable to be transported for seven years, at the discretion of the court before which he, she or they shall be tried.”

By 1 and 2 Geo. 4. c. 76. similar provisions are made for the Cinque Ports.

For destroying king's ships, &c. vide *ante*, p. 50—“Offences against the King.”

By the articles of war, king's ships negligently running others down, the offender to be punished by court-martial.

For Damaging Ships in Thames, vide *ante*, p. 232.

## CHAP. XXV.

### OF PURVEYANCE.

ANCIENTLY the king's court was supplied with necessaries from the ancient demesnes of the crown, which were manured for that purpose, and in respect thereof the tenants of those lands had many privileges, which they still enjoy; but this method being found to be troublesome and inconvenient, was by degrees disused, and afterwards the king used to appoint certain officers to buy in provisions for his household, who were called purveyors, and claimed many privileges, by the prerogative of the crown, and seem to have had the pre-emption of all such victuals as were brought by any one to sell again.

† *Sect. 2.* By *Magna Charta*, chapter 21. “The king shall not take the timber of any person against his will:” and by many subsequent statutes, several offences of purveyors were made felonies; as if they took things above the value of twelve-pence against the will of the owner, without warrant, or without such appraisement as was directed by those statutes, or without paying for them, &c.

† *Sect. 3.* But these laws having been found by experience not to have sufficiently provided against the oppressions of persons employed for making provisions for his majesty's household, carriages, and other purveyance for his majesty, and several counties having found themselves obliged to submit to sundry rates and taxes, and compositions, to redeem themselves from such vexations and oppressions, as it is recited by 12 Car. 2. c. 24. s. 12. it was enacted by the said statute, “That from thenceforth no sum or sums of money, or other thing, shall be taken, raised, taxed, rated, imposed, paid, or levied, for or in regard of any provision, carriages, or purveyance for his majesty, his heirs or successors.”

*Sect. 4.* And by 12 Car. 2. c. 24. s. 13. it is further enacted, “That

“ That no person or persons, by any warrant, commission, or authority under the great seal, or otherwise, by colour of buying or making provision or purveyance for his majesty, or any queen of *England* for the time being, or of any of the children of any king or queen of *England* for the time being, or that shall be, or for his, their, or any of their household, shall take any timber, fuel, cattle, corn, grain, malt, hay, straw, victual, cart, carriage, or other thing whatsoever, of any the subjects of his majesty, his heirs or successors, without the free and full consent of the owner or owners thereof, had and obtained without menace or enforcement; nor shall summon, warn, take, use, or require any the said subjects to furnish or find any horses, oxen, or cattle, carts, ploughs, wains, or other carriages, for the use of his majesty, his heirs or successors, or of any queen of *England*, or of any child or children of any of the kings or queens of *England* for the time being, for the carrying the goods of his majesty, his heirs or successors, or the said queens, or children, or any of them, without such full and free consent as aforesaid; any law, statute, custom, or usage to the contrary notwithstanding.”

*Sect. 5.* And by 12 Car. 2. c. 24. s. 14. it is further enacted, “ That no pre-emption shall be allowed or claimed in the behalf of his majesty, or of any of his heirs or successors, or of any of the queens of *England*, or of any of the children of the royal family, for the time being, in market or out of market, but that it be free to all and every the subjects of his majesty, to sell, dispose, or employ his said goods to any other person or persons, as him listeth; any pretence of making provision or purveyance of victual, carriages, or other thing for his majesty, his heirs or successors, or of the said queens or children, or any pretence of pre-emption in their, or any of their behalfs notwithstanding. And if any person or persons shall make provision or purveyance for his majesty, his heirs or successors, or any the queens or children aforesaid, or impress or take any such carriages, or other things aforesaid, on any pretence or colour of any warrant aforesaid, under the great seal, or otherwise, contrary to the intent hereof, it shall be lawful for the justices of peace, or such two or one of them as dwell near, and to the constables of such parish or village where such occasion shall happen, at the request of the party grieved, to commit, or cause to be committed, the party or parties so doing and offending, to gaol, till the next sessions, there to be indicted and proceeded against for the same,” &c.

*Sect. 6.* But this absolute and universal restraint of all kinds of purveyance having been found by experience inconvenient, it was enacted by 13 and 14 Car. 2. c. 20. which has been often continued by subsequent statutes, that the officers of the navy may press carriages for the use of his majesty's navy and ordnance, according to the regulations prescribed by that statute, and the like was enacted by 1 Jac. 2. c. 10. in relation to the king's royal progresses, &c.

## BOOK I. PART II.

### OF OFFENCES AGAINST THE COMMONWEALTH.

IT has been before observed (Chap. II. p. 5.) that of offences against man, some were more immediately against the king, others more immediately against the subject. In the preceding Part, the offences against the king, as affecting his person and rights, and also against the subject, as affecting his person, habitation, and property, have been considered. It now remains to consider of offences against the COMMONWEALTH, which offences may be distributed under the following heads :

Offences against GOD and RELIGION.

against PUBLIC JUSTICE.

against the PUBLIC PEACE.

against PUBLIC TRADE.

against the PUBLIC REVENUE.

against the PUBLIC HEALTH.

against the PUBLIC ECONOMY.

### CHAP. XXVI.

#### AGAINST GOD.

##### *Of Heresy.*

THE offences more immediately against God are, by common law, of three kinds : Heresy, Witchcraft, and Sodomy.

Concerning HERESY, I shall consider, 1. What it is. (1) 2. By whom it is cognizable. 3. How it is punishable.

*Sect. 1.* As to the first point, it seems, that among protestants, heresy is taken to be a false opinion, repugnant to some point of doctrine clearly revealed in scripture, and either absolutely essential to the Christian faith, or at least of most high importance. 4 Comm. 44. 2 Burn. E. L. 258—260. 1 Hale, 383 to 410. 3 Inst. 40.

*Sect. 2.* But it is impossible to set down all the particular errors which may properly be called heretical, concerning which there are, 4 Comm. 48. 4 Com. Dig. 8vo edit. 342 to 347.

(1) According to Lyndwood, "*Is qui male sentit vel docet de fide, de corpore Christi, de baptismo, de peccatorum confessione, matrimonio, vel aliis sacramentis ecclesie, et generaliter qui de aliquo predicto*"

*rum, vel de articulis fidei aliter predicat, docet, vel sentit quam docet sancta mater ecclesia, dicitur hereticus.*" (Provinciale de Hæreticis.)

are, and always have been, so many intricate disputes. However, the statute 1 Eliz. c. 1. s. 18. which erected the high commission court (a), having restrained the same from adjudging any points to be heretical which have not been determined to be such, either by scripture, or by some one of the four first general councils, or by some other council, by express words of scripture, or by the parliament, with the assent of the convocation; it has been since generally holden, that these rules will be good directions to ecclesiastical courts in relation to heresy.

(a) Repealed by  
16 Car. 1. c. 11.  
s. 3.

3 Inst. 40.

B. Heresy,  
passim.  
2 R. Abr. 226.

Sect. 3. As to the second point, viz. by whom heresy is cognizable. It is certain that the convocation may declare what opinions are heretical; but it hath been questioned of late, whether they have power at this day to convene and convict the heretic.

F. N. B. 269.  
Sum. 5.  
1 Hale, 392.  
Gib. 401. 410.  
12 Co. 56, 57.  
93. 3 Inst. 40.  
9 St. Tr. 275.

Sect. 4. However it is agreed, that every bishop may convict persons of heresy within his own diocese, and proceed by church censures against those who shall be convicted: but it is said, that no spiritual judge who is not a bishop, hath this power; and it has been questioned, whether a conviction before the ordinary be a sufficient foundation whereon to ground the writ *de heretico comburendo*, as it is agreed that a conviction before the convocation was.

Sect. 5. By 24 Hen. 8. c. 9. the archbishop of either province may cite any person before him for heresy, if the immediate ordinary either consent thereto, or do not his duty in punishing the same.

27 H. 8. 14.  
5 Co. 58.  
Hob. 236.  
3 Inst. 39.  
12 Co. 56.  
Finch. 219.  
1 Salk. 135.

Sect. 6. But it is certain, that a man cannot be proceeded against at the common law, in a temporal court, merely for heresy; yet if, in maintenance of his errors, he set up conventicles, and raise factions, which may tend to the disturbance of the public peace, it seems that he may in this respect be fined and imprisoned, upon an indictment, &c. at the common law.

1 Hale, 399.  
3 Inst. 42.  
1 Roll. 110.  
2 Bulst. 300.

Sect. 7. Also a temporal judge may incidentally take notice, whether a tenet be heretical or not; as where one was committed by force of 2 Hen. 4. c. 5. for saying, that he was not bound by the law of God to pay tithes to the curate; and another for saying, that though he was excommunicated before man, yet he was not before God; the temporal courts on an *habeas corpus* in the first case, and on an action of false imprisonment in the other, adjudged neither of the points to be heresy within the statute; for the king's courts will examine all things which are ordained by statute.

5 Co. 5.  
1 And. 191.  
1 Leon. 190.  
3 Lev. 314.  
1 Hale, 407.

Sect. 8. Also in a *quare impedit*, if the bishop pleaded that he refused the clerk for heresy, it seems that he must set forth the particular point, that it may appear to be heretical, to the court wherein the action is brought; which having consunance of the original cause, must by consequence have a power as to all incidental matters necessary for the determination of it; and, without knowing the very point alleged against the clerk, will not be able to give directions concerning it to the jury, who, if the party be dead, are to try the truth of the allegation.

Sect.

**Sect. 9.** But if a man be proceeded against as an heretic in the spiritual court *pro salute animæ*, and think himself aggrieved, his proper remedy seems to be by appeal to a higher ecclesiastical court, and not to move for a *prohibition* from a temporal one, which, as it seems to be agreed, cannot regularly determine or discuss what shall be called heresy.

5 Co. 88.  
27 H. 8. 14.

**Sect. 10.** As to the THIRD POINT, viz. How heresy is punishable, (2) there is no doubt but that at common law one convicted thereof, and refusing to abjure it, or falling into it again after he had adjured it, might be burnt by force of the writ *de hæretico comburendo*, which was grantable out of chancery upon a certificate of such conviction; but it is said, that he forfeited neither lands nor goods, because the proceedings against him were only *pro salute animæ*.

F. N. B. 269.  
3 Inst. 43.  
Dr. and St. l. 3 c. 29.

**Sect. 11.** But at this day the writ *de hæretico comburendo* is abolished by 29 Car. 2. c. 9. And all the old statutes which give a power to arrest or imprison persons for heresy, or introduce forfeiture on that account, are repealed.

Sum. 4, 5.  
Gilb. 353.  
12 Co. 44.

**Sect. 12.** Yet by the common law, an obstinate heretic being excommunicated, is still liable to be imprisoned by force of the writ *de excommunicato capiendo*, till he makes satisfaction to the church.

1 Salk. 293.  
B. R. H. 314.

**Sect. 13.** And by 9 and 10 Will. 3. c. 32. "If any person, having been educated in or having made profession of the christian religion within this realm, shall be convicted in any of the courts of Westminster, or at the assizes, of denying any one of the persons in the Holy Trinity to be God, or of maintaining that there are more Gods than one, or of denying the truth of the Christian religion, or the divine authority of the holy scriptures, he shall for the first offence be adjudged incapable of any office; and for the second, shall be disabled to sue any action, or to be a guardian, executor, or administrator; or to take by any legacy or deed of gift, or to bear any office civil or military, or benefice ecclesiastical, for ever, and shall also suffer imprisonment for three years, without bail or mainprize, from the time of such conviction."

Penalty and disability for denying any one of the persons of the Holy Trinity to be God.  
Repealed as to the Trinity by st. Geo. 3. c. .

3 Jac. 1. c. 21.

**Sect. 14.** But by 9 and 10 Will. 3. c. 32. s. 2. it is provided, "That no person shall be prosecuted by virtue of this act for any words spoken, unless the information of such words shall be given upon oath before a justice of the peace within four days after such words spoken; and the prosecution of such offence be within three months after such information."

Information must be given within four days, and prosecution commenced within three months.

**Sect. 15.** Also by 9 and 10 Will. 3. c. 32. s. 3. "Any person convicted of the aforesaid crimes shall, for the first offence (upon

But if the offender shall renounce his erroneous opinions,

(2) By the canon law, when a person was declared a heretic, all the relations and charities of civil life were dissolved, for Lyndwood tells us, "*Sunt enim hæretici ipso jure excommunicati. Item omnes eorum fideles liberantur, et omnis obligatio eis quæritur dissolvitur. Item in filiis dissolvitur vinculum patris potestatis, et ipsi filii fratres et sorores debent*

*eos deserere, et cum eis dissolvitur conjugalis servitus et potest fieri separatio a thoro. Item hæretici sunt infames et intestabiles activè et passivè.*" From what part of the charitable doctrines delivered by the holy founder of our religion, these learned and pious canonists drew their authorities, it may be difficult to determine.

he shall be discharged, " (upon his acknowledgment and renunciation of such erroneous opinions within four months after conviction), be discharged from all penalties and disabilities incurred by such conviction."

### *Of Witchcraft.*

Offenders of this nature are said to have been of three kinds.

3 Inst. 44.  
Dalt. p. 513,  
514.

**CONJURERS**, who by force of certain magic words endeavoured to raise the devil, and compel him to execute their commands.

**WITCHES**, who by way of friendly conference were said to bargain with an evil spirit to do what they desire of him.

**SORCERERS** or **charm**ers, who by the use of certain superstitious forms of words, or by means of images, or other odd representations of persons or things, &c. were said to produce strange effects above the ordinary course of nature.

3 Inst. 44.  
F. N. B. 269.  
S. P. C. 38.  
C. Eliz. 571.

*Sect. 2.* All these were anciently punishable in the same manner as heretics, by the writ *de hæretico comburendo* after a sentence in the ecclesiastical court, and a relapse. And it is said also, that they might be condemned to the pillory, &c. upon an indictment at common law.

1 Hale, 383.  
45 Ed. 3. 17.  
B. Cor. 15.

*Sect. 3.* In the time of king Edward the third, one taken with the head and face of a dead man, and a book of sorcery, was brought into the king's bench: but there being no indictment against him, he was sworn that from henceforth he would not be a sorcerer, and then delivered from prison, and the head was burnt at his charge: but this method seems to be obsolete at this day.

2 Keb. 719.

By 33 Hen. c. 8.  
witchcraft and  
sorcery were  
made felony  
without clergy.  
But accessories  
after were entitled, 1 Hale, 7.

*Sect. 4.* By statute 1 Jac. 1. c. 12. which was the only law in force against these offenders, they are divided into two degrees. Those in the first degree, and their accessories before the fact, were to suffer as felons without clergy.

Of these there were the four following species :

Sum. 6, 7.

4 Inst. 45. con. **FIRST**, " Such as shall use any invocation or conjuration of any evil spirit ;" and such seem clearly to be within the law, though no spirit do actually appear.

**SECONDLY**, " Such as consult, covenant with, entertain, employ, feed, or reward any evil spirit to any intent : " and these were agreed to be within the statute, though nothing farther was done upon such consultation, &c.

1 Jon. 143.

(u) See Lynn's  
Case, Cases in  
Cro. Law, 395.  
2 T. Rep. 733.

**THIRDLY**, " Such as take up any dead person's body, or any part thereof (a), to be used in any manner of witchcraft : " and these were also clearly within the statute, though they did not actually so use it.

**FOURTHLY**, " Such as exercise any witchcraft, incantment, charm, or sorcery, whereby any person shall be killed, destroyed, consumed,

"consumed, or lamed in his or her body, or any part thereof." But none were within this branch who did not actually effect such mischief.

*Sect. 5.* Those in the second degree were, for the first offence, to suffer a year's imprisonment, and the pillory; and for the second, as felons without clergy. And these, by the manifest purport of the words of the act, which is very obscurely penned, seem to be divided into the two following species:

FIRST, "Such as take upon them by witchcraft, enchantment, 12 Mod. 556.  
charm, or sorcery, to tell where treasure is to be found, or where  
"things lost or stolen may be found, (a) or to do any thing to the (a) See "Theft-  
"intent to provoke any person to unlawful love, or to hurt or de- bote," post.  
"stroy any person in his or her body, though the same be not  
"effected."

SECONDLY, "Such as shall use any witchcraft, &c. whereby Sm. 8.  
"any cattle or goods of any person shall be destroyed, wasted or 3 Inst. 46.  
"impaired:" but those who take upon them to do this, were not  
within the act unless they actually did it. (b)

(b) At Hertford  
assizes on the

4th March, 1712, one Jane Wenham received sentence of death under this statute, on a conviction for witchcraft, on the prosecution of the Rev. Mr. Brugge.

*Sect. 6.* But this statute of James is repealed by 9 Geo. 2. c. 5. which enacts, "That no proceeding shall be had against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with such crimes; and that whoever shall pretend to exercise those arts, or shall undertake to tell fortunes, or pretend by crafty science to discover stolen goods, shall be imprisoned for one year, stand four times in the pillory, and find sureties as the court shall think fit."

### Of Sodomy.

All unnatural carnal copulations, whether with man or beast, 12 Co. 36, 37.  
seem to come under the notion of sodomy, which was felony by 3 Inst. 58.  
the ancient common law, and punished, according to some au- Puff. ch. 3.  
thors, with burning; according to others, with burning alive. (1) 4 Bac. Ab. 569.

*Sect. 1.* But at this day, by force of 25 Hen. 8. c. 6, and 5 Eliz. c. 17. this offence is punished in the same manner as other felonies which are excluded from clergy. (2)

*Sect. 2.* In every indictment for this offence there must be the words *rem habuit veneream, et carnaliter cognovit*; and consequently some kind of penetration, and also of emission, must be proved; 12 Co. 36, 37.  
3 Inst. 58.  
Qu. 1 Hale, 628.  
670.

Sed vide 1  
St. Tr. 388.

(1) According to Britton, b. 6. c. 9. these unnatural offenders were, on conviction, committed to the flames. Fleta, b. 6. c. 35. buries them alive within the earth. And the Mirror, c. 1. s. 14. consigns them, with just indignation, to shameful and eternal oblivion.

(2) Sir Mathew Hale, 1 H. P. C. 670, says,

those that are present aiding and abetting are all principals; the statute making it felony generally: that there are or may be accessaries before and after, as in the case of rape; but although none of the principals are admitted to their clergy, yet accessaries before and after are not excluded from clergy.



Duffey's case, proved; but any the least degree is sufficient, and emission is 1721. *prima facie* an evidence of penetration.  
 Hollis's case, at Lincoln, 1781. Prentice's case, Admiralty Sess. 1786, Crown Circuit Assistant, 17, 18; and the case of Rex v. Wiseman, Fortescue's Rep. 91 to 98.

3 Bac. Ab. 38. Offences more immediately against God not capital, are by the common law,

1 Vent. 293. Sect. 1. FIRST, All blasphemies against God; as denying his  
 3 Keb. 607. being or providence, and all contumelious reproaches of Jesus  
 2 Str. 834. Christ.  
 4 Comm. 59.  
 1 Black. 395.

11 Mod. 142. Sect. 2. SECONDLY, All profane scoffing at the Holy Scripture,  
 Str. 416. 788. or exposing any part thereof to contempt or ridicule.  
 834.

1 Burn, 225. 4 Comm. 41. 3 Burn, E. L. 201. Fitzg. 65.

1 Str. Tr. 802. Sect. 3. THIRDLY, Impostors in religion; as falsely pretending to extraordinary commissions from God, and terrifying or abusing the people with false denunciations of judgments, &c.

1 Keb. 620. Sect. 4. FOURTHLY, All open lewdness grossly scandalous;  
 Dalt. 124. such as was that of those persons who exposed themselves naked  
 1 Sid. 168. to the people in a balcony in Covent Garden with most abomina-  
 See the case of R. v. Read. ble circumstances.  
 Fort. 98.

2 R. Abr. 184. Sect. 5. FIFTHLY, Seditious words in derogation of the estab-  
 C. Jac. 44. 421. lished religion are indictable, as tending to a breach of the  
 peace; as these, "Your religion is a new religion;" and,  
 "Preaching is but prattling, and prayer once a-day is more edi-  
 fying."

1 Ven. 293. Sect. 6. SIXTHLY, Offences of this nature, because they tend  
 3 Keb. 621. to subvert all religion or morality, which are the foundation of  
 Pop. 208. government, are punishable by the temporal judges with fine and  
 Scobell, 121. imprisonment, and also such corporal infamous punishment as to  
 4 Comm. 64. the court in discretion shall seem meet, according to the heinous-  
 Str. 776. 788. ness of the crime.  
 Ld. Ray. 451.

Offences, by statute, not capital, more immediately against God, are either such as are against RELIGION IN GENERAL, or such as are against THE ESTABLISHED CHURCH.

Offences against RELIGION IN GENERAL are of several kinds.

#### I. PROFANATION OF THE LORD'S DAY.

Fairs shall not be held on a Sunday or other holyday, except in harvest time.  
 Sect. 1. By 27 Hen. 6. c. 5. it is ordained, "That all manner  
 "of fairs and markets held upon the high and principal feasts, as  
 "in the feast of the Ascension of our Lord; in the day of Corpus  
 "Christi; in the day of Whitsunday; in Trinity Sunday, with  
 "other Sundays; and also in the high feast of the Assumption of  
 "our blessed Lady; the day of All Saints; and on Good Fri-  
 "day; shall clearly cease from all shewing of any goods or mer-  
 "chandizes (necessary victual only except), upon pain of for-  
 "feiture of all the goods aforesaid so shewed, to the lord of the  
 "franchise or liberty where such goods, contrary to this ordi-  
 "nance,

"nance, be or shall be shewed (the four Sundays in harvest except)."

*Sect. 2.* By 1 Jac. 1. c. 22. s. 28. "No person or persons who shall occupy the mystery or occupation of a cordwainer or shoemaker shall shew, to the intent to put to sale, any shoes, boots, buskins, startops, slippers or pantouffles, upon the Sunday, upon pain of forfeiture for every pair made, sold, shewed, or put to sale, three shillings and four-pence, and the just and full value of the same."

Shoemakers shall not expose their goods to sell on a Sunday.

*Sect. 3.* By 3 Car. 1. c. 1. "There shall be no meetings, assemblies, or concourse of people out of their own parishes on the Lord's day, within the realm of England, or any the dominions thereof, for any sports and pastimes whatsoever: nor any bear-baiting, bull-baiting, interludes, common plays, or other unlawful exercises and pastimes, used by any person or persons within their own parishes: and every person or persons offending in any these premises, shall forfeit for every offence three shillings and four-pence, the same to be employed and converted to the use of the poor of the parish where such offence shall be committed; and any one justice of the peace of the county, or the chief officer or officers of any city, borough, or town corporate, where such offence shall be committed, upon his or their view, or confession of the party, or proof of any one or more witness, by oath, shall find any person offending in the premises, the said justice or chief officer or officers shall give warrant, under his or their hand and seal, to the constables and churchwardens of the parish or parishes where such offence shall be committed, to levy the said penalty so to be assessed, by way of distress and sale of "the goods of every such offender, and in default of such distress the party offending shall be set publicly in the stocks by the space of "three hours."

Pastimes, sports, or games, shall not be practised on Sundays.

† *Sect. 4.* It is said that this statute does not prohibit, but rather impliedly allows, any innocent recreation or amusement to persons within their respective parishes, even on the Lord's day, after divine service is over. 4 Comm. 63.

*Sect. 5.* By 3 Car. 1. c. 2. s. 2. "If any butcher, by himself, or any other for him, by his privity or consent, shall kill or sell any victual upon the Lord's day, every such butcher shall forfeit and lose for every such offence the sum of six shillings and eight-pence."

Butchers shall not sell meat on Sundays.

† *Sect. 6.* The selling meat on a Sunday was no offence at common law, and therefore an indictment for this offence must conclude *contra formum statuti*. But if the offender keep open shop, the usual method is to indict at the sessions for the *nusance*. 1 Stra. 702. Cro. C. C. 372.

*Sect. 7.* By 29 Car. 2. c. 7. it is enacted, "That no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work at their ordinary callings upon the Lord's day, or any part thereof (works of necessity and charity only excepted;) and that every person, being of the age of fourteen years or upwards, offend-  
"ing

No worldly labour, business, or calling, shall be exercised on Sunday, except it be of necessity or for charity. 2 Burn, 787.

"ing in the premises, shall, for every such offence, forfeit the sum of five shillings: and that no person or persons whatsoever shall publicly cry, shew forth, or expose to sale, any wares, merchandize, fruit, herbs, goods or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried or shewed forth, or exposed to sale.—And on conviction before one justice, upon view, confession, or the oath of one witness, the justice may issue his warrant to the constables or churchwardens to seize the said goods, and to sell the same, and to levy the said other forfeitures or penalties by way of distress and sale; or, in case of insufficiency, to pay the said forfeitures or penalties, the party offending may be set publicly in the stocks by the space of two hours—the forfeitures and penalties to the use of the poor; saving that it shall be lawful for the justice, out of such penalties and forfeitures, to reward the informer, so as the reward exceed not a third part of the forfeitures and penalties. But it is provided, that nothing in this act shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat in inns, cooks'-shops, or victualling-houses, for such as otherwise cannot be provided; nor to the crying of milk before nine of the clock in the morning, or after four of the clock in the afternoon. And no person shall be prosecuted under this act, unless within ten days after the offence committed."

11 Mod. 114.  
Cowp. 640.

† *Sect. 8.* It is said to have been agreed by the court, that an indictment will lie on this statute against a baker for baking loaves of bread or rolls on the Lord's day in the usual way of his trade, because that is not a work of necessity; but that it will not lie for baking puddings, pies, or meat for dinners; for the sabbath is more likely to be generally observed by a baker staying at home to bake the dinners of a number of families, than by his going to church, and those families or their servants staying at home to dress dinners for themselves; and this sort of exercise of a trade not only falls within the exception of "works of necessity and charity," but is also within the proviso, as being for this purpose a cook's-shop; it being as reasonable that a baker should bake for the poor, as that a cook should roast or boil for them.

2 Burr. 780.

Crepps v. Durden, Cowp. 640.  
Comy. Rep. 274.  
10 Mod. 26.

† *Sect. 9.* It has also been determined, that a person cannot be convicted of committing more than one offence on the same day under this statute; and therefore if a justice proceed to convict an offender in more than one penalty for the same day, it is an excess of judicature, for which an action will lie before the convictions are quashed.

Brook v. Milliken, 3 Term Rep. 509.

† *Sect. 10.* But perhaps this must be understood only where the baking consists of one entire and continued act; for it has been determined on the statute 12 Geo. 2. c. 36. which inflicts a penalty on any person who shall sell English books piratically printed abroad, that two penalties may be incurred on the same day, if the acts of sale be distinct.

Mackarel may be sold on Sunday.

*Sect. 11.* By 10 and 11 Will. 3. c. 24. s. 14. for regulating the sale of fish at *Billingsgate market*, "the act shall not be construed  
"to

“ to prohibit the selling of mackarel before or after divine service on Sundays.”

† Sect. 12. By 21 Geo. 3. c. 49. “ Any house, room, or other place, which shall be opened or used for public entertainment or amusement, or for publicly debating on any subject whatsoever, upon any part of the Lord’s day, called Sunday, and to which persons shall be admitted by the payment of money,\* or by tickets sold for money, shall be deemed a disorderly house or place; and the keeper of such house, room, or place, shall forfeit the sum of two hundred pounds for every day that such house, room, or place, shall be opened or used as aforesaid on the Lord’s day, to such person as will sue for the same, and be otherwise punishable as the law directs in cases of *disorderly houses*; and the person managing or conducting such entertainment or amusement on the Lord’s day, or acting as master of the ceremonies there, or as moderator, president, or chairman, of any such meeting for public debate on the Lord’s day, shall likewise, for every such offence, forfeit the sum of one hundred pounds to such person as will sue for the same; and every door-keeper, servant, or other person, who shall collect or receive money or tickets from persons assembling at such house, room, or place, on the Lord’s day, or who shall deliver out tickets for admitting persons to such house, room, or place, on the Lord’s day, shall also forfeit the sum of fifty pounds to such person as will sue for the same.

Public debating societies, to which persons are admitted for money, shall not be held on Sunday.

† Sect. 13. By 21 Geo. 3. c. 49. s. 2. “ Any person who shall at any time hereafter appear, act, or behave him or herself as master or mistress, or as the person having the care, government, or management of any such house, room, or place as aforesaid, shall be deemed and taken to be the keeper thereof, and shall be liable to be sued or prosecuted, and punished as such, notwithstanding he or she be not in fact the real owner or keeper thereof: and wherever any such house, room, or place, shall belong to, or be kept by, divers persons in partnership, as joint-owners or joint-keepers thereof, each and every such joint-owner or joint-keeper of such house, room, or place, shall be deemed the keeper thereof, and shall be liable to be sued or prosecuted, and punished as such: and any house, room, or place, at which persons shall be supplied with tea, coffee, or any other refreshments of eating or drinking, on the Lord’s day, at any greater prices than the common and usual prices at which the like refreshments are commonly sold upon other days at such house, room or place, or at coffee-houses, or other houses where the same are usually sold, shall be deemed a house, room, or place, to which persons are admitted by the payment of money, although money be not there taken in the name of or for admittance, or at the time when persons enter into or depart from such house, room, or place; and any house, room, or place, which shall be opened or used for any public entertainment or amusement, or for public debate, on the Lord’s day, at the expense of any number of subscribers or contributors to the carrying on any such entertainment or amusement, or debate, on the Lord’s day, and to which per-

The person who shall manage any public debating society to which persons shall be admitted on Sunday for money, shall be considered as the master thereof.

sons

“ sons shall be admitted by tickets, to which the subscribers or contributors shall be intitled, shall be deemed a house, room, or place, to which persons are admitted by the payment of money, within the meaning of this act.”

Persons advertising or publishing any public meeting on the Lord's day, to which persons are admitted for money, shall forfeit £50.

† Sect. 14. And by 21 Geo. 3. c. 49. s. 3. “ Any person advertising, or causing to be advertised, any public entertainment or amusement, or any public meeting for debating on any subject whatsoever, on the Lord's day, to which persons are to be admitted by the payment of money, or by tickets sold for money, and any person printing or publishing any such advertisement, shall respectively forfeit the sum of fifty pounds for every such offence, to any person who will sue for the same.” But the action must be brought within six calendar months after the offence committed.

No carrier, driver, or drover, shall travel on Sunday.

† Sect. 15. By 3 Car. 1. c. 2. it is enacted, “ That no carrier with any horse or horses, nor waggonman with any waggon or waggons, nor carman with any cart or carts, nor wainman with any wain or wains, nor drover with any cattle, shall, by themselves, or any other, travel upon the Lord's day, upon pain that every person and persons so offending, shall lose and forfeit twenty shillings for every such offence.”

Persons travelling on Sunday shall not, if robbed, charge the hundred.

† Sect. 16. By 29 Car. 2. c. 7. s. 5. “ If any person or persons whatsoever, who shall travel upon the Lord's day, shall be then robbed, no hundred, nor the inhabitants thereof, shall be charged with, or answerable for, any robbery so committed, but the person or persons so robbed shall be barred from bringing any action for the said robbery.” But this shall not remove from the inhabitants of the counties and hundreds the obligation of making *hue and cry*.

The Waterman's Company may appoint ferry-boats to work on Sunday.

Sect. 17. By 11 and 12 Will. 3. c. 21. s. 13. “ The Rulers of the Waterman's Company, for the time being, or the major part of them, on their respective court-days, may appoint any number of watermen, not exceeding forty, to ply and work on any Lord's day between Vauxhall and Limehouse, at such common stairs or places of plying as to the rulers shall seem most convenient for the carrying and recarrying of passengers cross the said river between the limits aforesaid, at one penny each person so to be carried. The amount to be paid to the Rulers of the Waterman's Company every Monday morning, on pain of forty shillings.”

Hackney coaches and chairs may ply on Sunday.

Sect. 18. By 9 Anne, c. 23. s. 20. “ It shall be lawful to and for any licensed hackney coachman or his driver, or any chairman, to ply and stand with their coaches and chairs, and to drive and carry the same respectively on the Lord's day, within the limits of the weekly bills of mortality.”

Fish carriages may pass and repass on Sunday.

† Sect. 19. By 2 Geo. 3. c. 15. “ Fish carriages, such as are described in the act, shall be allowed to travel, pass, and be drawn, on Sundays and holydays, on any road, whether laden or returning empty; and the horse or horses which shall return from drawing any such fish carriage, although rode on by any driver of any such fish carriage, or drawing back any empty fish carriage,

"carriage, shall also be allowed to pass on Sundays and holy-days on any road, without any driver of any such fish carriage, or the rider on any such horse as aforesaid, incurring any penalty for so travelling therewith."

† Sect. 20. By 13 Geo. 3. c. 80. "If any person or persons shall upon a Sunday, or on Christmas-day, in the daytime, knowingly and wilfully take, kill, or destroy, any hare, pheasant, partridge, heath game, or moor game; or shall upon a Sunday, or on Christmas-day, use any gun, dog, net, or engine, for taking, killing, or destroying, any hare, pheasant, partridge, moor game, or heath game; every such person shall forfeit, for the first offence, any sum not exceeding twenty pounds, nor less than ten pounds; and for the second offence, any sum not exceeding thirty pounds, nor less than twenty pounds; on conviction before one justice on the oath of one witness: but if information shall be made on oath by one witness, before one justice, against any person offending, and it shall appear that he hath already been convicted of a first and second offence, such justice may commit him to the common gaol, or house of correction, till the next general quarter-sessions, unless he enter into a recognizance with two sureties to appear at such sessions, to be heard by indictment, for such third offence; and, on conviction, shall forfeit and pay fifty pounds, or, on neglect or refusal, be committed to the common gaol, or house of correction, for not less than six nor more than twelve months."

Game shall not be killed by any person either on a Sunday or Christmas-day.

† Sect. 21. By 29 Car. 2. c. 7. s. 6. "No person or persons, upon the Lord's day, shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree, (except in cases of treason, felony, or breach of the peace,) but that the service of every such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatsoever; and the person or persons so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree at all."

Civil process shall not be served or executed on Sunday.

† Sect. 22. Before the passing of this statute all *ministerial acts* done on a Sunday were lawful; (a) and now a warrant of justices of the peace for good behaviour; (b) an escape warrant; (c) the lord chancellor's warrant, or an order of commitment for a contempt; (d) process on an indictment, or citation of the spiritual court; (e) may be executed on a Sunday, for they are within the exception of the statute. But persons who are bail to the sheriff cannot take the principal on a Sunday to surrender him; (f) nor can a man, as has been before held, (g) be taken on a Sunday on an attachment for non-performance of an award. (h)

(a) 9 Co. 66.  
Cro. Jac. 280.  
(b) Ray. 350.  
Cro. Car. 602.  
(c) 6 Mod. 231.  
5 Mod. 95.  
(d) Carth. 504.  
(e) 1 Atk. 55.  
Sed. qu.  
(f) 2 Bl. Rep. 1273.  
(g) 1 Atk. 55.  
(h) 1 Term Rep. 266.

## II. PROFANE CURSING AND SWEARING.

Sect. 23. By 19 Geo. 2. c. 21. "If any person or persons shall profanely curse or swear, and be thereof convicted, on the oath of any one or more witness or witnesses, before any one justice of the peace for any county, city, riding, division, or liberty, or before the mayor, justice, bailiff, or other chief magistrate,

The penalties on profane cursing and swearing; and the mode of punishment.  
8 Mod. 59:

"gistrate,

9 Mod. 366.  
Sayer, 304.  
Stra. 497. 686.  
608.  
2 Ld. Ray. 1360.

"gistrate, of any city or town corporate, or by the confession of  
"the party offending, every person or persons so offending shall  
"forfeit and lose the respective sums hereinafter mentioned, that  
"is to say—every day labourer, common soldier, common sailor;  
"and common seaman, one shilling—and every other person  
"under the degree of a gentleman, two shillings—and every per-  
"son of or above the degree of a gentleman, five shillings; and  
"in case any such person or persons shall, after conviction,  
"offend a second time, every such person shall forfeit and lose  
"double; and for every other offence after a second conviction,  
"treble the sum first forfeited by any offender for profane curs-  
"ing and swearing as aforesaid."

Justice may  
convict on his  
own hearing,  
&c.

Sect. 24. By 19 Geo. 2. c. 21. s. 2. "In case any person or  
"persons shall profanely swear, or curse, in the presence and  
"hearing of any justice of the peace, &c., he may convict every  
"such offender as aforesaid, without any other proof."

The constable  
shall immedi-  
ately apprehend  
persons who  
curse and swear  
in his presence,  
&c.

† Sect. 25. By 19 Geo. 2. c. 21. s. 3. "In case any person shall  
"profanely swear or curse in the presence and hearing of any  
"constable, petty constable, tythingman or other peace officer,  
"they and each of them shall, if the offender be unknown to  
"them, seize, secure, and detain the such offender, and forthwith  
"carry him before the next justice, &c.; and if any person so  
"profanely swearing and cursing in the presence or hearing of  
"any such constable, &c. shall be known to him or them, he or  
"they shall speedily make information before some justice, &c."

Justices shall  
immediately  
convict offend-  
ers, and on  
non-payment of  
penalty send  
them to the  
house of correc-  
tion.

† Sect. 26. By 19 Geo. 2. c. 21. s. 4. "And every such  
"justice, &c. shall, immediately upon information given upon  
"oath of any such constable, &c. or of any other person whatso-  
"ever, cause the offender to appear before him, and, upon such  
"information being proved as aforesaid, convict such offender;  
"and if such offender do not immediately pay down the respec-  
"tive sum so forfeited, or give security to the satisfaction of the  
"justice, &c. before whom the conviction is made, he shall be  
"committed to the house of correction, to be kept to hard labour,  
"for ten days."

But if they are  
soldiers or  
sailors, they  
shall, on non-  
payment, be set  
in the stocks.

† Sect. 27. But by 19 Geo. 2. c. 21. s. 5. "In case any com-  
"mon soldier belonging to any regiment in his majesty's service,  
"or any common sailor or common seaman belonging to any ship  
"or vessel, shall be convicted of profane cursing or swearing as  
"aforesaid, and shall not immediately pay down the penalty, or  
"give security as aforesaid, and also the costs; he shall, instead  
"of being committed to the house of correction, be ordered to  
"be publicly set in the stocks for the space of one hour, for every  
"single offence, and for any number of offences, whereof he  
"shall be convicted at one and the same time, two hours."

Conviction by  
the justice shall  
be final.

† Sect. 28. By 19 Geo. 2. c. 21. s. 8. "Every justice shall cause  
"the conviction to be drawn up in the form as described in the  
"act; which said form and conviction shall not be liable to be  
"removed by *certiorari* into his majesty's court of King's Bench,  
"but shall be deemed and taken to be final to all intents and  
"purposes whatsoever."

Sect.

*Sect. 29.* By 22 Geo. 2. c. 33. "Persons belonging to his majesty's ships of war, guilty of profane oaths or curses, shall incur such punishment as a COURT MARTIAL shall impose."

### III. DRUNKENNESS.

*Sect. 30.* By 4 Jac. 1. c. 5. "All and every person and persons who shall be drunk, and of the same offence of drunkenness shall be lawfully convicted, shall, for every such offence, forfeit and lose five shillings, to be paid within one week after conviction, to the churchwardens of the parish where the offence shall be committed, for the use of the poor; and on refusal or neglect to pay the same, it may be levied by warrant, or precept, from the convicting magistrate; or, if the offender shall be unable to pay the same, he shall be committed to THE STOCKS by the space of six hours for every offence."

Persons convicted of drunkenness shall forfeit five shillings,  
1 Jac. 1. c. 9.  
4 Jac. 1. c. 3.  
7 Jac. 1. c. 10.  
21 Jac. 1. c. 7.  
1 Car. 1. c. 4.  
Cro. Ca. 285.  
1 Bum, 40.

### IV. REVILING THE SACRAMENT.

*Sect. 31.* By the statute 1 Edw. 6. c. 1. repealed by 1 Mary, c. 2. and revived by 1 Eliz. c. 1. it is enacted, "that whoever shall deprave, despise, or condemn the blessed sacrament of the Lord's Supper, in contempt thereof, by contemptuous words, or by any words of depraving, despising, or reviling; or shall advisedly in any otherwise condemn, despise, or revile the said most blessed sacrament, shall suffer imprisonment, and make fine and ransom at the king's will and pleasure."

Persons reviling the sacrament of the Lord's Supper, shall suffer imprisonment.

*Sect. 32.* By 3 Jac. 1. c. 21. "Whoever shall use the name of the Holy Trinity profanely or jestingly, in any stage play, interlude, or show, shall be liable to a *qui tam* penalty of ten pounds."

To ridicule the Holy Trinity, incurs a penalty of £10.

*Sect. 33.* By 1 Will. 3. c. 18. s. 17. "Whoever shall deny in his preaching or writing the doctrine of the blessed Trinity, shall lose all benefit of the act for granting toleration, &c."

Penalty on denying the Trinity.

*Sect. 34.* I shall not mention the offences against 2 & 3 Edw. 6. c. 19. and 5 Eliz. c. 5. relating to fasts and fish-days, because it is expressly declared, that those statutes are enacted merely on a political account; and it is made penal to affirm that any eating of fish, or forbearing of flesh mentioned therein, is necessary to salvation, or that it is the service of God.

Fasts and fasts,  
2 Burn. 185,  
186.

### *Of Offences against the Established Church.*

Offences against THE ESTABLISHED CHURCH are, such as concern all persons in general; such as more immediately relate to those of the Popish religion; and such as more immediately regard Protestant dissenters.

Those which concern all persons in general are, FIRST, Against the Common Prayer. SECONDLY, Nonconformity. THIRDLY, In teaching school without conforming to the church. FOURTHLY, In not coming to church.

#### I. OFFENCES AGAINST THE COMMON PRAYER.

*Sect. 1.* As to which it is to be observed, that by 2 & 3 Edw. 4 Comm. 50.  
1 Lev. 295,



Can. 5, 6, 7.  
Gib. 259.  
3 Burn, E. L.  
220.

6. c. 1. and 6 Edw. 6. c. 1. which were repealed by 1 Mary, 2. c. 2. and revived by 1 Eliz. 3. 2. THE COMMON PRAYER BOOK was first established under severe penalties; but the same penalties being repeated and enlarged by 1 Eliz. c. 2. and 13 & 14 Car. 2. c. 4. which enacts the use of the same Common Prayer with some alterations, those statutes of Edward the sixth seem, at this day, to be of little use.

Form of the indictment,  
3 Mod. 78.

*Sect. 2.* By 1 Eliz. c. 2. s. 4, 5, 6. "If any parson, vicar, or other whatsoever minister, that ought to say the said Common Prayer, &c. shall refuse to use it in such church, &c. or other place where he should use to minister the same, or wilfully or obstinately standing in the same, use any other form, or speak any thing in derogation of the said book, or any thing therein contained, he forfeits for the first offence, one year's profit of all his spiritual promotions, and shall suffer six months imprisonment; and for the second offence, shall be deprived, &c."

In the construction of this act it has been resolved,

Dyer, 203.  
1 Leo. 295.

*Sect. 3. FIRST,* That under the words "parson, vicar, or other whatsoever minister, that ought or should say the said Common Prayer, &c." those clergymen who have no cure are included, as much as those who have one, and that they are punishable for using any other form, &c. inasmuch as by their ordination they are obliged to officiate in the offices of the church, &c. and it is said that they are sufficiently shewn to be in holy orders by the word *clericus* in an indictment.

Rex v. Sparks,  
3 Mod. 78.  
See the indictment at large,  
2 Show. 447.

† *Sect. 4.* The indictment also must allege that the party not only used another form of prayer, but that he used it instead of that prescribed by the book of Common Prayer, for otherwise every parson might be indicted that used prayers before his sermon other than such as are required by the book of Common Prayer; and therefore where a parson was indicted for using *alias preces* in the church *et alio modo* than mentioned in the said book, and concluded *contra formam statuti*, the court quashed the indictment.

Gib. 268.  
5 Co. Cawdry's  
case, 5, 6.  
Poph. 59.  
2 R. Abr. 222.

*Sect. 5. SECONDLY,* That this statute being not only in the affirmative, but also expressly saving the jurisdiction of ecclesiastical courts, does not restrain them from proceeding against these offenders in their own methods, as disturbers of the unity and peace of the church; and consequently that such persons may be deprived by the said court, according to the course of the spiritual law, for the first offence.

*Vide 7 & 8 sections of this act, the 13 & 14 Car. 2. c. 4. enforced by 5 Ann. c. 5. and 22 Geo. 2. ch. 33. 2 Shower, 53.*

*Sect. 6.* Also it is further enacted, by 1 Eliz. c. 2. s. 9. "That if any person shall in plays, songs, or other open words, speak any thing in derogation, depraving or despising of the said book, &c. or by open fact compel, or otherwise procure or maintain any minister to say any Common Prayer openly, &c. in other form; or shall, by any of the said means, let any minister to say the said Common Prayer, &c. he shall forfeit one hundred marks for the first offence, and four hundred for the second, &c. (which if he pay not within six weeks after conviction, he shall suffer six months imprisonment for the  
"first



"first offence, and twelve for the second), and for the third  
"offence shall forfeit all his goods and chattels, and shall suffer  
"imprisonment for life."

*Sect. 7.* It has been made a question in the construction of *Dyer*, 203. 231. this clause, whether, if the party die within six weeks, the said forfeiture be not discharged, since by the act of God the election of paying it, or suffering imprisonment in lieu of it, is taken away.

† *Sect. 8.* But by 31 Geo. 3. c. 32. s. 3. "No person pro- See the act  
fessing the Roman Catholic religion, who shall take and more at large,  
"subscribe the oath therein mentioned, shall be convicted or post.  
"prosecuted upon this act."

### *Of Nonconformity in Office.*

Offences in accepting or holding an office without due conformity to the church, consist—FIRST, In not receiving the sacrament both before and after the acceptance of an office.—SECONDLY, In going to any other place for religious worship than Church, during the continuance in an office.

#### I. As to the FIRST of these offences.

*Sect. 1.* It is enacted by the Corporation Act, 13 Car. 2. st. 2. c. 1. s. 12. "That no person or persons shall be placed, elected, Every member  
"or chosen in or to any office of mayor, alderman, recorder, of a Corporation  
"bailiff, town clerk, common councilman, or other office of shall take the  
"magistracy, or place, or trust, or other employment relating to Sacrament.  
"or concerning the government of any city, corporation, borough,  
"cinque port, or other port town, that shall not have, within one  
"year next before such election or choice, taken the Sacrament  
"of the Lord's Supper according to the rites of the Church of  
"England, and in default hereof every such placing, election,  
"and choice shall be void."

† *Sect. 2.* But by 5 Geo. 1. c. 6. s. 3. "All and every person But corporators  
and persons in actual possession of any office that are required who have  
by the above act to take the sacrament of the Lord's Supper, neglected to  
within one year next before his election or choice into such take the sacra-  
office, shall be confirmed in their several and respective offices ment shall be  
and places, notwithstanding their omission to take the sacra- established in  
ment as aforesaid, and shall be indemnified, freed, and their offices un-  
discharged of and from all incapacities, disabilities, forfeitures, less removed or  
and penalties arising from such omission; and none of their prosecuted for  
acts, nor the acts not yet avoided of any who have been mem- such omission  
bers of any corporation, or in actual possession of such offices, within six  
shall be questioned or avoided for or by reason of such omis- months.  
sion; but all such acts shall be and are hereby declared to be  
as good and effectual as if all and every such person and per-  
sons had taken the sacrament of the Lord's Supper in manner  
aforesaid; nor shall any person or persons who shall be here-  
after placed, elected, or chosen in or to any the offices afore-  
said, be removed by the corporation or otherwise prosecuted  
"for or by reason of such omission; nor shall any incapacity,  
"disability, forfeiture, or penalty be incurred by reason of the  
"same,

## OFFENCES AGAINST RELIGION.    Bk. 1.

“ same, unless such person be so removed, or such prosecution  
 “ be commenced within six months after such person be placed  
 “ or elected into his respective office as aforesaid; and, in case  
 “ of a prosecution, the same shall be carried on without wilful  
 “ delay.”

Fitzg. 47.

† Sect. 3. It has been held, that persons chosen in bare free-  
 men of a corporation, if they have no share in the magistracy or  
 government thereof, need not take the sacrament.

Tufton v. Ne-  
 vinson, 2 Ld.  
 Ray. 1354.  
 Stra. 585.

† Sect. 4. If a person be duly chosen alderman of a borough,  
 and obtain a *mandamus* to the mayor to swear him in, and the  
 mayor return that he was not elected alderman as by the writ is  
 supposed, the plaintiff, on the trial of an issue on this return,  
 must prove that he had received the sacrament within one year  
 before his election, according to the statute 13 Car. 2. st. 2.; for  
 never having been admitted into the office, he is not within the  
 5 Geo. 1. c. 6. although six months had expired from the time  
 of his election; for it is the *possession* only that is protected by  
 that act.

Crawford v.  
 Powell, 2 Burr.  
 1013.  
 1 Bl. Rep. 229.

† Sect. 5. But if a person be elected town clerk, and obtain a  
*mandamus* for the delivery of the common seal, books, papers,  
 and records of the corporation, and afterwards bring an action  
 for falsely returning that he was not duly elected town clerk, the  
 plaintiff need not prove that he had received the sacrament pur-  
 suant to the 13 Car. 2. st. 2: although the return to the *man-  
 damus* were made within six months after his election; for, since  
 the statute 5 Geo. 1. c. 6. s. 3. the election of a person who  
 had not taken the sacrament within a year next preceding it is  
 not void, but only voidable by a removal or prosecution within  
 six months, and therefore after an undisturbed possession for  
 that time the election is confirmed and become absolute.

Marten v. Jen-  
 kins, 2 Stra.  
 1145.

† Sect. 6. So if a mayor is to be chosen from among the jurats  
 of a corporation, and a person be chosen a jurat without having  
 received the sacrament within one year previous to his election,  
 and after the expiration of six months without removal, or pro-  
 secution, he is chosen mayor, the statute of 5 Geo. 1. c. 6. will  
 operate so as to give him the benefit of non-prosecution, and  
 remove his incapacity and disability arising from having neglected  
 to receive the sacrament within the year before he was chosen  
 jurat.

Rex v. Monday,  
 Cowp. 529.

† Sect. 7. But although the statute 5 Geo. 1. c. 6. after the  
 expiration of six months, operates as a protection to the posses-  
 sion, yet if the objection to the not having received the sacrament  
 within a year previous to the election be recently made before any  
 possession, it will not bar the remedy: as if the person elected,  
 upon being refused to be sworn in, applies for a *mandamus*, the  
 fact of his not having received the sacrament would be a suf-  
 ficient ground of refusal.

Harrison v.  
 Evans, Cowp.  
 393. 535.  
 2 Burr, K. L.  
 168.  
 Espinasse Dig.  
 659.

† Sect. 8. The statute 13 Car. 2. st. 2. not only creates a dis-  
 ability in the person elected to hold the office, but operates as  
 a prohibition to the electors, for it was made to exclude dissenters  
 from office, and to disable them from serving; and therefore if a  
 Protestant

Protestant dissenter be elected to the office of sheriff, and sued, upon a bye law of the corporation, for a fine for not taking upon him the office, he may plead the Corporation Act, and the Toleration Act, 1 Will. and Mary, c. 18. in bar to such action.

† Sect. 9. But although a person who has not received the sacrament within one year is not eligible to any office within the meaning of the 13 Car. 2. st. 2. yet it has been adjudged to be no excuse for a person bound to accept of a corporation office, that he is disabled to receive the sacrament by having been excommunicated; for it is incumbent on such person to remove the disability.

Rex v. Read,  
2 Mod. 299.  
Comb. 315.  
Sav. 43.

Sect. 10. By the Test Act, 25 Car. 2. c. 2. it is enacted, That all and every person or persons that shall be admitted, entered, placed, or taken into any office or offices, civil or military, or shall receive any pay, salary, fee, or wages by reason of any patent or grant of his majesty, or shall have command or place of trust from or under his majesty, his heirs or successors, or by his or their authority, or by authority derived from him or them, within England, Wales, or Berwick upon Tweed, or in his majesty's navy, or in the several islands of Jersey and Guernsey, or that shall be admitted into any service or employment in his majesty's household or family, shall take the several oaths of supremacy and allegiance (a), and at the same time shall make and subscribe the Test, and shall also receive the Sacrament of the Lord's Supper according to the usage of the church of England, in some public church upon some Lord's day, commonly called Sunday, immediately after divine service and sermon: And all and every person or persons aforesaid, that do or shall neglect or refuse to take the said oaths and sacrament, shall be *ipso facto* adjudged incapable and disabled in law to all intents and purposes whatsoever to have, occupy, or enjoy the said office or offices, employment or employments, or any part of them, or any profit or advantage appertaining to them or any of them; and every such office and place, employment and employments, shall be void, and is hereby adjudged void; and, on conviction by information, presentment, or indictment, shall be disabled in law, &c. and shall forfeit five hundred pounds.—But this act shall not extend to married women; to persons under eighteen years of age; to persons beyond seas; or to persons *non compos mentis*; or to constables, churchwardens, overseers, surveyors of the highway, or any like inferior civil officer; or to any office of forester or keeper of any park, chase, warren, or game; or bailiff of any manor or lands, nor to any like private officers."

All persons holding any office civil or military, or having any place of trust under the crown, shall not only take the oaths of allegiance and supremacy and receive the sacrament, but shall also make and subscribe the Test.

Carth. 478.

(a) As recited  
6 Geo. 3. c. 58.

It has been questioned whether this statute to the Censor of the College of Physicians.  
Carth. 478.  
5 Mod. 431.  
3 Burn. 258.

† Sect. 11. By 1 Geo. 1. c. 13. s. 2. "All and every person and persons, as above described, and all ecclesiastical persons, heads or governors of what denomination soever, and all other members of colleges and stalls in any university, that are or shall be of the foundation, or that do or shall enjoy any exhibition, being of or as soon as they shall attain the age of eighteen years, and all persons teaching or reading to pupils in any university or elsewhere, and all school-masters and ushers,

All heads of colleges, school-masters, barristers, attorneys, &c. shall take the oaths, &c. pursuant to the Test Act.

Mod. 431.  
Burn's J.

"and all preachers and teachers of separate congregations, high and chief constables, and every person who shall act as a serjeant at law, counsellor at law, barrister, advocate, attorney, solicitor, (1) proctor, clerk, or notary, by practising in any manner as such in any court or courts whatsoever in England, who shall be admitted into or enter upon any of the before-mentioned preferments, benefices, offices, or places, or shall come into any such capacity, &c. shall take the oaths of allegiance and supremacy, and subscribe the declaration. But this act shall not extend to avoid any office of inheritance, so as the person having such office substitute a deputy or deputies, and such deputy or deputies shall qualify him or themselves pursuant to the directions of 25 Car. 2. c. 2."

And the said oaths, &c. shall be taken in one of the superior courts, or at sessions within six months.

† Sect. 12. By 9 Geo. 2. c. 26. s. 3. "All and every the person and persons as above described, shall take and subscribe the oaths appointed by the 1 Geo. 1. c. 13. in such form as by that statute is directed, in the court of chancery, king's bench, common pleas, or exchequer, or at the general or quarter-sessions of the county, city, or place where such person shall be or reside, at any time within six calendar months after he or they shall be admitted into or enter upon any such preferment, benefice, office or place, or come into such capacity, or take upon him or them such practice, employment, or business as aforesaid; and all persons who, by 25 Car. 2. c. 2. are required to make and subscribe the declaration against transubstantiation, shall make and subscribe the said declaration at the same places and at the same times as are by this act limited for taking and subscribing the oaths aforesaid: and all persons neglecting to take the oaths and subscribe the declaration within the times hereby limited, shall incur the disabilities and penalties inflicted by the said act, 25 Car. 2. c. 2."

Corporators elected, &c. shall take the oaths on election.  
Burn, 2130.  
Esp. Dig. 693.

† Sect. 13. By 11 Geo. 1. c. 4. s. 4. "Mayors, bailiffs, or other chief officers, who shall be elected pursuant to the directions of this act, shall take the oath or oaths required by law at the time of their admission into such office, before such officer as shall preside at such election."

But no person shall be summoned to take the oaths, &c.

† Sect. 14. But by 31 Geo. 3. c. 32. s. 18. "No person shall be *summoned* to take the oath of supremacy, or the oath of allegiance, or to make the declaration against transubstantiation, or be prosecuted for not obeying such summons."

utw. 910.  
Mod. 499.  
Jibe. 506.  
nb. 315.  
v. 43.  
ad. 200.

Sect. 15. But it hath been adjudged, that the persons disabled by not taking the oaths, &c. lose only their right to the profits of their offices from the time of such disability; but that they lose nothing vested in them before.

Sect.

Will. 3. c. 24. "If any person a serjeant at law, counsellor at law, advocate, attorney, solicitor, proctor, without having taken the oaths of supremacy, as required by the c. 8. or made and subscribed by 25 Car. 2. c. 2. the penalties of a person

"*nire*." But by the 31 Geo. 3. c. 32. s. 22. these oaths and this declaration shall not be required to be taken by any person professing the Roman Catholic religion, as a qualification or requisite to enable him to act in the capacities aforesaid, but taking the oath of allegiance, abjuration, and declaration appointed by the act shall be sufficient.

## Ch. 15. CRIMINAL MATTER OF RELIGION

**Sect. 16.** Notwithstanding the words of the Corporation Act are so very strong as to make such election, &c. void, and those of the Test Act to make such persons "disabled in law to all intents and purposes whatsoever, to have, occupy, or enjoy the said offices;" yet it hath been strongly holden, that the acts of one under such a disability, being instated in such an office, and executing the same without any objection to his authority, may be valid as to strangers. For otherwise not only those who no way infringe this law, but even those whose benefit is intended to be advanced by it, might be sufferers for another's fault, to which they are no way privy; and one chasm in a corporation happening through the default of one head officer, would perpetually vacate the acts of all others, whose authority, in respect of their admission into their offices, or otherwise, may depend on his.

2 Keb. 663. 22.  
2 Jon. 81. 22.  
2 Lev. 104. 243.  
2 Mod. 193.  
3 Lev. 116.

**II.** As to the **SECOND OFFENCE** of this kind, viz. that of going to any other place for religious worship than the church, during the continuance of an office.

**Sect. 17.** It is enacted by 5 Geo. 1. c. 4. "That if any mayor, bailiff, or other magistrate, in England, Wales, Berwick upon Tweed, Jersey or Guernsey, shall knowingly or wilfully resort to or be present at any public meeting for religious worship other than the church of England, as by law established, in the gown or other peculiar habit, or attended with the ensign or the ensigns, of or belonging to such his office, that every such mayor, bailiff, or other magistrate, being thereof convicted by due course of law, shall be disabled to hold such office or employments, and shall be adjudged incapable to bear any public office or employment whatsoever within England, Wales, Berwick upon Tweed, Jersey, or Guernsey."

If a corporate magistrate attend any other place of worship than the church in his official habit, he shall be disabled.

4 Comm. 54.

### *Of Nonconformity in Schoolmasters.*

As to the offence of teaching school without conforming to the church, so far as it concerns all persons in general.

**Sect. 1.** By 23 Eliz. c. 1. s. 6, 7. "If any person or persons, body politic or corporate, shall keep or maintain any schoolmaster, who shall not repair to church according to the form of the said statute, or be allowed by the bishop or ordinary of the diocese, (who shall not take any thing for the said allowance,) they shall forfeit for every month ten pounds; and such schoolmaster presuming to teach contrary to the said act, and being thereof convicted, shall be disabled to be a teacher of youth, and shall suffer imprisonment, without bail or mainprize, for one year."

Schoolmasters not conforming to the liturgy forfeit £10, and are disabled to teach.

**Sect. 2.** By 1 Jac. 1. c. 4. s. 9. "No person shall keep any school, or be a schoolmaster, out of the universities or colleges of this realm, except it be in some public or free grammar school, or in some such nobleman's or noblewoman's, or gentleman's or gentlewoman's house, as are not recusants, or where the same schoolmaster shall be specially licensed thereunto by the archbishop, bishop, or guardian of the spiritualities."

No person shall keep a school except a free grammar school, or in a university, the bishop or guardian of the spiritualities.

1 Vent. 41. " of that diocese, upon pain, that as well the schoolmaster as  
 Vide 19 Geo. 3. c. 44. " also the party that shall retain or maintain any such school-  
 " master, contrary to the meaning of the said statute, shall forfeit  
 " each of them, for every day so wittingly offending, forty shil-  
 " lings."

Or except dis-     † Sect. 3. But by 1 Will. and Mary, c. 18. commonly called  
 senters qualified the Toleration Act, " Neither the 23 Eliz. c. 1. nor any other  
 under the " law or statute of this realm, made against papists, or popish  
 Toleration Act. " recusants, except 25 Car. 2. c. 2. and 20 Car. 2. st. 2. c. 1.  
 (See the 12 An. " shall be construed to extend to any person dissenting from the  
 st. 2. c. 7. and " Church of England that shall take the oaths mentioned in the  
 5 Geo. 1. c. 4.) " first of William and Mary, and subscribe the declaration men-  
 1 Stra. 58. " tioned in the 30 Car. 2. c. 1."

Or Roman Ca-     † Sect. 4. And by 31 Geo. 3. c. 32. s. 13. " No ecclesiastic  
 tholics qualified " or other person professing the Roman Catholic religion, who  
 under the 31 " shall take and subscribe the oath of allegiance, abjuration, and  
 Geo. 3. c. 32. " declaration, therein-mentioned, shall be prosecuted in any  
 See post. " court whatsoever, for teaching and instructing youth, as a tutor  
 " or schoolmaster, under the provisions and regulations of the  
 " act."

### *Of Offences in not coming to Church.*

For the better understanding of the offences of not coming to church, so far as the same relate to all persons in general, except such as are within the indulgence of the Toleration Act, I shall consider,—FIRST, How far persons are punishable for their own absence from the church. SECONDLY, How far they are punishable for suffering such absence in others.

In order to shew how far persons are punishable for their own absence, I shall consider the following particulars: FIRST, What forfeitures of money, lands, or goods, such offenders incur. SECONDLY, In what manner they are to be proceeded against for those forfeitures. THIRDLY, What other inconveniences they are subject unto. FOURTHLY, By what means they may be discharged.

As to the FIRST POINT, I shall consider, *First*, What forfeitures of money; and, *Secondly*, What forfeitures of lands and goods such offenders are liable unto.

The forfeitures of money, to which they are liable, are threefold:—1. That of twelve-pence for the absence of one Sunday, or other holyday. 2. That of twenty pounds for the absence of every month contained in a conviction. 3. That of twenty pounds for the absence of every month after a conviction.

I. The forfeiture of TWELVE-PENCE for the absence of one Sunday, or other holyday.

Sect. 1. This depends upon 1 Eliz. c. 2. by which it is enacted, " That all persons inhabiting within this realm, or any  
 " other the king's dominions, shall diligently and faithfully,  
 " having no lawful or reasonable excuse to be absent, endeavour  
 " to resort to their parish church or chapel accustomed, or upon  
 " reasonable let thereof, to some usual place where common  
 " prayer

Persons neglect-  
 ing to go to  
 church, on Sun-

"prayer and such service of God shall be used, in such time of day shall forfeit twelve-pence for every offence.  
 "let, upon every Sunday, and other days ordained and used to  
 "be kept as holydays, and then and there to abide, orderly  
 "and soberly, during the time of the common prayer, preaching,  
 "or other service of God, there to be used and ministered, upon  
 "pain of punishment by the censures of the church, and also  
 "upon pain that every person so offending shall forfeit for every  
 "such offence twelve-pence." (a)

(a) By 3 Jac.  
 c. 4. s. 27, 28.

this forfeiture may be levied by the churchwardens, by distress, by warrant of one justice.

In the exposition of this statute, the following opinions have been holden.

*Sect. 2. First,* That the indictment needs not shew that the party had no reasonable excuse for his absence, or that he is an inhabitant within this realm, &c., but that the defendant, if he have any matter of this kind in his favour, ought to shew it.

2 Leon. 5.  
 Godb. 148.  
 29 El. c. 6. s. 5.  
 Gib. 291. 964.

*Sect. 3. Secondly,* That if the spiritual court, proceeding upon this statute, refuse to allow a reasonable excuse, they may be prohibited; but that if they proceed wholly on their own canons, they shall not be at all controuled by the common law, unless they act in derogation from it, as by questioning a matter not triable by them, as the bounds of a parish, &c.; for they shall be presumed to be the best judges of their own laws.

2 Roll. 438. 455.  
 1 Bulst. 159.  
 Gib. 358. 292.

*Sect. 4. Thirdly,* That he who misbehaves himself in the church, or misses either morning or evening prayer, or goes away before the whole service is over, is as much within the statute as he who is wholly absent; and that he who is absent from his own parish church, shall be put to prove where he went to church.

1 Roll. 93.  
 1 Keb. 491.  
 Godb. 148.  
 Dalt. c. 45. f.  
 1 Sid. 301. 230.  
 Gib. 292.  
 2 Keb. 124.

*Sect. 5. Fourthly,* That the offence in not coming to church, consisting wholly in a non-feasance, and not supposing any act done, but barely the omission of what ought to be done, need not to be alleged in any certain place; for, properly speaking, it is not committed any where.

1 And. 139.  
 Hob. 251.  
 2 Leon. 167.

II. The forfeiture of twenty pounds for the absence of a whole month, contained in a conviction.

*Sect. 6.* This depends upon 23 Eliz. c. 1. s. 5. by which it is enacted, "That every person, above the age of sixteen years, who shall not repair to some church, chapel, or usual place of common prayer, but forbear the same, contrary to the tenor of the said statute of 1 Eliz. c. 2. and being thereof lawfully convicted, shall forfeit to the king, for every month which he or she shall so forbear, twenty pounds."

Persons absent from church shall forfeit £20 a month.

Prec. of Declaration,  
 Lutw. 201.

In the exposition hereof it hath been resolved :

*Sect. 7. First,* That this statute, by inflicting twenty pounds for a month's absence, dispenses not with the forfeiture of twelve-pence, given by 1 Eliz. c. 2. for the absence of one Sunday; for both may well stand together, and the twelve-pence is immediately forfeited upon the absence of each particular day.

11 Co. 63.  
 1 Roll. 94.

*Sect. 8. Secondly,* That these words, "being thereof lawfully convicted," are no more than the law would have implied if they had not been expressed, and therefore operate nothing.

Lutw. 163.  
 11 Co. 57. 59.  
 1 Roll. 89. 233.  
 Dyer, 160.  
 3 Bulst. 27.

From



From whence it follows, that they neither cause the party to forfeit any thing by a conviction, unless judgment be given thereon, nor restrain the forfeiture to such offences only as are committed after a previous conviction, inasmuch as they mean no more than what the law provides of common right in every case, viz. that the party shall forfeit nothing till he be convicted.

11 Co. 58, 60.  
1 Roll. 89, 90.

*Sect. 9. Thirdly,* That he who is condemned on demurrer, or *nihil dicit*, is sufficiently convicted within the act; for whoever is adjudged is convict, though it follow not that every one who is convict is adjudged, &c.

C. Jac. 529.

*Sect. 10. Fourthly,* That one who was sick for part of the time contained in an information upon this statute, shall not be at all excused by reason of such sickness, if it be proved that he was a recusant both before and after; for it shall be intended that he obstinately forbore during that time.

Yel. 100.  
Cro. Eliz. 835.  
Cawley, 61.

*Sect. 11. Fifthly,* That the time of a month, intended by the statute, shall be computed not by the calendar, but by the number of days, allowing twenty-eight days to each, according to the common rule of expounding statutes, which speak generally of a month.

III. The forfeiture of twenty pounds for the absence of every month after a conviction.

*Sect. 12.* This depends upon 28, commonly called 29, Eliz. c. 6. s. 4, and the 3 Jac. 1. c. 4. s. 8. 3. by which it is enacted, "That every offender being convicted of not coming to church, contrary to the purport of the statutes above mentioned, shall pay twenty pounds for every month after such conviction, until he shall conform himself and come to church." 3 Lev. 533. Lut. 203. 2117. 2 Mod. 240. 1 And. 294. 11 Co. 63. 3 Keb. 742. 1 Ver. 143. 2 Ver. 711. Ld. Ray. 77. 210. 343. 371. 382. 1224.

As to the SECOND BRANCH of this head, viz. what forfeiture of lands and goods such offenders are liable to.

If persons convicted shall not pay the penalties, the king may seize all their personal and two-thirds of their real estates.

*Sect. 13.* This depends also upon 29 Eliz. c. 6. s. 4. and 3 Jac. 1. c. 4. s. 8, 9. by which 'it is enacted, "That if the offender shall make default of payment of the twenty pounds, both for every month contained in the conviction, and also for every month subsequent, during which he shall not conform himself to the church, the king shall take, seize, and enjoy, all his goods, and two parts of his hereditaments, leases, and farms, leaving the third part only of the same hereditaments, leases, and farms, to and for the maintenance and relief of the same offender, his wife, children, and family, notwithstanding any prior conveyance thereof, made by such offender, with power of revocation, or to the use of himself or his family."

And the king may refuse the £20 a month, though tendered, and seize two-thirds of the offender's estate.

By the 3 Jac. 1. c. 4. s. 11. it is also enacted, that "The king may refuse the penalty of twenty pounds a month, though it be tendered according to law, and thereupon seize two parts of all the hereditaments, leases, and farms, which at the time of such seizure shall be, or afterwards shall come to any such offender, or to any other to his use, or in trust for him, or at his disposition,

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"tion, or whereby, or in consideration whereof, he or his family shall be relieved, maintained, or kept, leaving unto him his chief mansion-house as part of his third part."

In the construction of these statutes the following points have been resolved:

*Sect. 14. First,* That the king, by making the election given him by 3 Jac. 1. to seize the offender's hereditaments, &c., waives the benefit of the twenty pounds a month, and the power of seizing the offender's goods.

1 Jones, 24, 25.  
Cawl. 171, 172.

*Sect. 15. Secondly,* That a recognizance or bond taken by such offenders, either in their own names, or in the names of others, to their use, are within the 29 Eliz. c. 6; for the words are, "That the king shall take, seize, and enjoy, all the goods, &c.," which, in an act of parliament, will include the whole personal estate; and though a *chose in action* cannot properly be said to be "taken," or "seized," yet may it properly enough be said to be "enjoyed."

12 Co. 1, 2.  
1 Leon. 98.  
1 Roll. 7.

*Sect. 16. Thirdly,* That no copyhold lands are within 29 Eliz. c. 6. (and by the same reason it seemeth that they are not within 3 Jac. 1. c. 4.) in respect of the prejudice which would accrue to the lord by the loss of his services, &c.

Owen, 37.  
1 Leon. 97.  
Cawl. 107.

*Sect. 17. Fourthly,* That the profits of the land seized by the king, by force of 29 Eliz., for the non-payment of the twenty pounds a month, ought not to be applied to the satisfaction thereof, but that the lands ought to remain in the king's hands, by way of pledge, till the whole forfeiture be paid some other way. But this construction of the statute seeming over severe, it was provided by 3 Jac. 1. c. 4. s. 5. "That the profits of the said lands should go towards the satisfaction of the twenty pounds."

C. Eliz. 845.  
2 Roll. 25.  
Palm. 41.  
W. Jones, 24.

*Sect. 18. Fifthly,* It hath been questioned, whether an estate conveyed by another in trust for a recusant, be liable to be seized by force of the said statute of 29 Eliz., because it expressly avoids such conveyances only as are made by the recusant himself to his own use, &c. And, perhaps, if it shall plainly appear, that an estate is settled *bonâ fide* in trust for a recusant, by some friend of his, upon some other view, and not merely with an intent to evade the statute, it may be reasonable to exempt such a conveyance out of the meaning of it. However, it is clear from the express words of 3 Jac. 1. c. 4. s. 11. "That the king, upon his waiving the forfeiture of the twenty pounds a month, may seize and take to his own use two parts of all the hereditaments, &c. which shall come to any such offenders, or to others to their use, or in trust for them, or be at his or her disposition, or whereby such offender or his or her family shall be relieved, maintained, and kept; and also all other hereditaments, &c. in any wise, or at any time, liable to such seizure, or to the penalties aforesaid, and the same to retain till every such offender shall conform, in lieu and full recompense of the twenty pounds monthly that during such seizure and retainer shall incur." Also it is said, that the king may seize an estate which

Lane, 105, 106.  
Cawl. 169.  
12 Co. 1, 2.

Lane, 39.

which is granted to a recusant in trust for another; and it is certain that the statute has made no express provision for the *cestui que trust*.

As to THE SECOND GENERAL HEAD of this chapter, *viz.*—In what manner offenders of this nature are to be proceeded against for the forfeitures above-mentioned, I shall consider, **FIRST**, How they are to be proceeded against for the said forfeiture of twelve-pence for the absence of every Sunday, &c. **SECONDLY**, In what manner for the said forfeiture of twenty pounds for the absence of every month contained in a conviction. **THIRDLY**, In what manner for the said forfeiture of twenty pounds for the absence of every month after a conviction; and, **FOURTHLY**, In what manner they are to be proceeded against for the said forfeitures of lands and goods.

I. As to the recovery of the said forfeiture of twelve-pence for the absence of every Sunday.

*Sect. 19.* It was enacted by 1 Eliz. c. 2. “That the same “should be levied by the church-wardens of the parish where “such offence should be done, to the use of the poor of the “same parish, of the goods, lands, and tencments of such “offenders, by way of distress.”

One justice, upon the confession of the party, or the oath of one witness, may levy the penalty of twelve-pence for every Sunday the party is absent.

*Sect. 20.* But this being defective in not shewing by whom, or in what manner, such offenders should be convicted, or by whom the warrant for levying the said forfeiture should be granted, it was further enacted by 3 Jac. 1. c. 4. s. 27. “That it shall be “lawful for one justice of the peace of the limit, division, or “liberty, wherein the said party shall dwell, upon the confession “of the party, or the oath of one witness, to call the said party “before him, and if he shall not make a sufficient excuse, and “due proof thereof, to the satisfaction of the said justice of “peace, that it shall be lawful for the said justice of peace to “make a warrant to the church-warden of the said parish, where “the said party shall dwell, to levy twelve-pence for every such “default, by distress and sale of the offender’s goods, rendering “the overplus to the said offender; and that in default of such “distress, it shall be lawful for the said justice of peace to commit every such offender to prison until the said forfeiture shall “be paid, which shall be employed to the use of the poor of the “parish wherein the offender shall be resident or abiding at the “time of the offence.”

II. In what manner the said offenders are to be proceeded against for the said forfeiture of twenty pounds for the absence of every month contained in a conviction.

I shall consider, **FIRST**, In what manner it may be recovered at the king’s suit by way of indictment; **SECONDLY**, In what manner by way of action or information; and, **THIRDLY**, In what manner at the suit of the informer.

AND **FIRST**, as to the recovery hereof at the suit of the king by way of indictment.

The indictment of a recusant

*Sect. 21.* By the 23 Eliz. c. 1. s. 9. “The justices of oyer, “assize,

" assize, gaol-delivery, and quarter-sessions of the peace, might inquire of and determine these offences within one year and a day." But by 29 Eliz. c. 6. s. 2. it was ordained, " That all such convictions should be in the King's Bench, or at the assizes, or general gaol-delivery, and not elsewhere." However, by 3 Jac. 1. c. 4. s. 7. the jurisdiction of the sessions is revived.

may be at sessions, or in the superior courts. 1 Roll. 94. 11 Co. 63. Cawl. 66, 67. 82, 83.

*Sect. 22.* By 29 Eliz. c. 6. s. 5. and 3 Jac. 1. c. 4. s. 7. " Upon an indictment at the assizes, gaol-delivery, or general sessions of the peace, proclamation shall be made that the offender render himself to the sheriff before the next assizes, gaol-delivery, or sessions; and that if he shall not then appear of record, upon such default recorded, the same shall be a conviction in law, as if a trial by verdict on the indictment had been recorded." And by s. 9. " Every such conviction shall be certified into the Exchequer, &c."

And if the offender do not appear on proclamation, his default shall be a conviction. Precedent, Lut. 203. 1101. Salk. 145.

In the construction hereof it hath been resolved :

*Sect. 23. First,* That such a conviction shall not be looked on as a judgment; for the words are, " it shall be a conviction in law, as if a trial, &c. had been recorded;" and consequently that it cannot be reversed by a writ of error, which cannot be brought on any record which is not a judgment; and therefore that the party has no other remedy against an insufficient conviction, but to remove it into the exchequer, and quash it there. Also upon the same ground it has been holden, that a forfeiture due to the king by force of such a conviction, shall not be taken to be within the exception of a general pardon, which excepts " all forfeitures, &c. converted to a debt by judgment."

1 Vern. 355. Ray. 434. Vide Salk. 145. 11 Co. 63. Inf. s. 42.

*Sect. 24. Secondly,* That if the proclamation do not pursue the statute, as if it appoint that the body shall be rendered at next sessions, &c., whereas by the statute it ought to order a render to the sheriff, and that before the next sessions, the conviction is insufficient.

Palm. 40, 41. Bridg. 123. 3 Lev. 333. Lutw. 1117.

*Sect. 25. Thirdly,* That an actual personal appearance of the defendant at the next sessions, &c. will no way avail him, unless the same be entered of record.

Cawley, 164. Pop. 29. Keilw. 180.

*Sect. 26.* It hath been holden, That a man cannot be convicted by force of this statute upon a default on a proclamation, &c. in the King's Bench; because this court is not mentioned in the statute. But, perhaps, this opinion may justly be questioned, because the court of King's Bench being the supreme court of assize, and gaol-delivery, &c. in the county where it sits, it seems that a statute, by giving any power to the courts of assize, or gaol-delivery, does impliedly give the same to the court of King's Bench, unless it have some restrictive words to the contrary.

Hob. 205. Sum. 156. C. Car. 465. 2 Lev. 179. 2 Mod. 128.

*Sect. 27.* If the defendant do appear, there is no doubt but that the proceedings ought to be according to the common course of law upon other indictments in all respects, except those which are within the restraint of 3 Jac. 1. c. 4. s. 16, 17. by which it is enacted : " That no such indictment, nor any proclamation, outlawry, or other proceeding thereupon, shall at any time hereafter be avoided, discharged, or reversed, by reason of any defect in form, or lack of form, or other defect whatsoever (other than

A judgment, whether upon an indictment or proclamation, shall not be re-

versed for defect of form.

C. Car. 504.  
Rayn. 434.

"than by direct traverse to the point of not coming to church, &c.); but the same indictment shall stand in force and be proceeded upon; any such default of form, or other defect whatsoever notwithstanding, unless the party so indicted shall con- form, &c."

However it hath been resolved :

11 Co. 59. 65.  
1 Roll. 95.  
C. Jac. 480.

*Sect. 28. First,* That the party is only restrained from taking advantage of defects in the record itself, and that he may plead any collateral matter; as a pardon, or *autrefois convict*, &c.

C. Car. 504.  
Show. 309.  
5 Mod. 141.  
3 Keb. 591.

*Sect. 29. Secondly,* That he may even reverse a judgment after verdict for any such defect, in the record itself, as tends to the king's prejudice; as the omission of a *capiatur*, &c.; and that he may reverse an outlawry for any common defect, upon putting in bail, and traversing the indictment as to the point of not coming to church; which is very agreeable to the purport of the whole clause, the latter part whereof seems manifestly to qualify the generality of the former.

SECONDLY, As to the recovery of the said forfeiture, by way of action or information, at the king's suit.

The forfeitures for recusancy, whether of twelve-pence or twenty pounds, may be recovered by action or information.

*Sect. 30.* By 35 Eliz. c. 1. s. 10. "All and every the said pains, duties, forfeitures, and payments, shall and may be recovered and levied to her majesty's use, by action of debt, bill, plaint, information, or otherwise, in any of the courts commonly called the King's Bench, Common Pleas, or Exchequer, in such sort, and in all respects, as by the ordinary course of the common laws of this realm any other debt due by any such person in any other case should or may be recovered or levied, wherein no essoin, protection, or wager of law, shall be admitted or allowed."

(a) Dr. Foster's case, 11 Co. 61, 62.

*Sect. 31.* It is said, (a) That the principal end of making this clause, was to enable the queen to proceed against the husband for the recusancy of his wife, which she could not do by virtue of any of the former statutes, by which she had no other way of proceeding but by indictment, and consequently could not charge the husband for the forfeiture of the wife, because she could not make him a party to the suit, as she may by force of this statute. However, it is said, that on a conviction of the wife upon an indictment, the lands and leases which the husband has in her right may be seized by the exchequer process.

C. Jac. 482.  
Bridgm. 122,  
seems contrary.

THIRDLY, As to the manner in which an informer may proceed for the forfeitures aforesaid.

And the penalties shall be distributed in thirds, to the king, the poor, and the informer.

2 Leon. 167.  
29 Eliz. 6. s. 7.

*Sect. 32.* By 23 Eliz. c. 1. s. 11. "All forfeitures of any sums of money limited by that act shall be divided into three equal parts, whereof one third shall be to the queen, to her own use; one other third to the queen for the relief of the poor in the parish where the offence shall be committed, to be delivered by the warrant of the principal officers in the receipt of the exchequer, without further warrant from her majesty; and the other third to such person as will sue for the same, in any court of record, by action of debt, bill, plaint, or information, in which suit

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“suit no essoin, &c. shall be allowed; and that every person which shall forfeit any sums of money by virtue of that act, and shall not be able, or shall fail to pay the same within three months after judgment thereof given, shall be committed to prison, there to remain until he have paid the same sums, or conform himself to go to church, and there do as is aforesaid.”

*Sect. 33.* It has been objected (*a*), that this clause shall not extend to the said forfeiture of twenty pounds a month for not coming to church, because the same is by the former part of this statute given expressly to the queen, whereas the forfeitures for saying or hearing mass, and keeping an unlicensed schoolmaster, are inflicted by the same statute indefinitely, and not expressly given to any one. From which it is argued (*b*), that this latter clause of distribution ought only to be applied to the said indefinite clauses, and not to take from the queen any part of that which was expressly given her before. Yet it has been answered and resolved (*c*), that it shall equally extend to all; for the limitation of the forfeiture to the queen is mere surplus, and no more than the law would have implied; *et expressio eorum, quæ tacite insunt, nihil operatur.*

(*a*) Dr. Foster's case, 11 Co. 58. a.

(*b*) See 1 Roll. Rep. 89.

(*c*) Dr. Foster's case, 11 Co. 60. a.

*Sect. 34.* Also it has been resolved (*d*), that an informer may sue not only for the third part which belongs to him, but for the whole penalty in the behalf of himself and the king, and that the judgment shall be, that they shall recover, &c.

(*d*) Cuff's case, 1 And. 139, 140. But see Bk. 2. c. 26, s. 76.

*Sect. 35.* Also it hath been adjudged, that neither the above-mentioned clause of 29 Eliz. c. 6. which orders, “That all convictions upon 23 Eliz. shall be certified into the exchequer, and also that the offender shall pay to the queen twenty pounds for every month contained in the indictment, &c.” nor the said clause in the 35 Eliz. c. 1. by which it is enacted, “That all the said pains, &c. shall be recovered to the queen's use,” do take away the suit of the informer against one not proceeded against by the king, or the third part of the penalty given him by 23 Eliz. c. 1.: for the plain purport of both these acts is to further the punishment of recusants; and therefore, in as much as they are in the affirmative, and consistent with 23 Eliz. they shall not be construed to abrogate any part of it.

Sup. s. 13. 33.

11 Co. 61, 62.  
1 Roll. 92, 93.

*Sect. 36.* Moreover it is manifest, that 29 Eliz. c. 6. extends only to the king's suit by indictment, for the word “indictment” is mentioned almost in every clause.

*Sect. 37.* And it also follows from hence, that the second paragraph of the said statute of 29 Eliz. which enacts, “That convictions for this offence shall be only at assizes, gaol-delivery, or the king's bench,” restrains only convictions upon indictments, and consequently does not any way impeach the jurisdiction of the common pleas, or exchequer, as to the informations, &c.

Hob. 205.  
Con. 11 Co. 61.

*Sect. 38.* It seems the better opinion upon comparing all the Books together, which differ much from one another both in stating the cases, and giving the reasons of the judgments relating

11 Co. 59. 65.  
B. 2. c. 26. s. 63.  
1 Roll. 93.  
C. Jac. 481.  
to Noy, 117.

Lanc. 60.  
Palm. 39, 40, 41.  
2 Roll. 108.  
Bridg. 122.  
Lutw. 208.

to this matter, that a conviction at the king's suit, whether strictly regular or erroneous, may be pleaded to a suit by an informer, because, while it stands in force, it makes the party liable to the forfeiture of twenty pounds a month, and no one ought to be punished twice for the same offence. But it hath been resolved, that an erroneous, and strongly holden, that a regular conviction by proclamation cannot be pleaded to a new suit by the king, because such a conviction is of no greater effect than a conviction by verdict, and consequently the king may waive it and begin anew.

C. Jac. 482.  
Bridg. 120, 122.  
2 Roll. 108.  
1 Bac. Abr. 294.

*Sect. 39.* But it seems very doubtful, whether the conviction of a *feme covert* upon an indictment can be pleaded to an information against her and her husband; because the husband is not liable to pay the forfeiture recovered upon an indictment.

*Sect. 40.* It seems that the ordinary method of recovering the said forfeiture of twenty pounds for every month contained in a conviction, either at the suit of the king or of an informer, may sufficiently appear from what has been already said; but there is an extraordinary remedy provided by the same statute of 29 Eliz. c. 6. to enforce the party to take care of the payment of the forfeiture of twenty pounds for every month contained in an indictment whereon he shall be convicted, by making his lands and goods liable to be seized by the king for the non-payment thereof into the exchequer, upon such of the terms of Easter or Michaelmas as shall be next after his conviction. But this extends not to a conviction by way of action, or information, as more fully appears from the two next sections.

III. In what manner the forfeiture of twenty pounds for the absence of every month after a conviction is to be recovered.

After conviction on an indictment, if the offender do not conform, he shall pay £20 a month, and, in default, the king may seize his goods and two thirds of his lands.

*Sect. 41.* It seems needless to inquire how far it may be recovered by an action or information for it at the king's suit, inasmuch as the said statutes of 29 Eliz. c. 6. and 3 Jac. 1. have made a most effectual provision for the payment of it, by expressly enacting, "That every such offender, being once convicted, shall for every month after such conviction, without any other indictment or conviction, pay into the Exchequer twice in the year, *viz.* in every Easter and Michaelmas Term, as much as shall then remain unpaid, after the rate of twenty pounds for every month after a conviction; and that for a default herein the king may seize all the goods, and two parts of the hereditaments of such an offender, &c."

Cawley, 102, 103.

*Sect. 42.* But it seemeth that these clauses extend not to any conviction upon an information or action, &c. but only to a conviction upon an indictment; for there is no other suit referred to besides that of indictment. Also it is said, that the said clauses extend to no convictions by verdict or otherwise, unless judgment be given thereon; because till then nothing is forfeited. And from the same ground it seems to follow, that they would not have extended to a conviction by default upon proclamation, if there had been no other words in the statute to this purpose than those by which it is enacted, "That such a default recorded shall be

Vide supra, sect. 8.

Vide infra, sect. 56.

“ be as sufficient a conviction in law of the said offence whereof  
 “ the party standeth indicted, as if upon the same indictment a  
 “ trial by verdict thereupon had proceeded and been recorded ;”  
 which words of themselves can by no means make such a conviction amount to a judgment after verdict, without which there can be no forfeiture upon any other conviction ; and therefore it seemeth that the forfeiture caused by such a conviction must depend upon the other clauses of the said statutes, and the constant tenor of our law books, which seem to suppose that a person so convicted shall be liable to the said forfeitures, as much as one against whom a judgment is expressly given.

See 29 El. 6. s. 6.  
 3 Jac. 1. c. 4.  
 s. 7, 8, 9.  
 Caw. 103, 104.

IV. In what manner offenders of this nature are to be prosecuted for the forfeiture of lands or goods.

*Sect. 43.* It appears, that the king hath his election, either to seize all the goods and two parts of the hereditaments and leases of the offender, upon his making default in the payment of twenty pounds, both for every month contained in an indictment whereon he shall be convicted, and also for every month subsequent, or else to refuse the said penalty of twenty pounds a month, and thereupon to seize two parts of the hereditaments and leases of the offender.

Vide ante, sec.  
 13, 14, 15, 17,  
 18, 40, 41.

*Sect. 44.* It also appears (a), that the king hath this advantage of seizing the lands and goods of the offender upon no other conviction but such as followeth an indictment, nor even upon such a conviction without a judgment, unless it be caused by a default upon a proclamation. Therefore I shall add no more to this head, except these two following observations :

(a) Ante, sec.  
 42.

*Sect. 45.* FIRST, That the king cannot seize the lands till it appears by the return of an inquisition, to that purpose to be awarded, of what lands, &c. the offender was seized, because the king's title to lands ought always to appear of record.

2 Inst. 573.  
 8 Co. 169.  
 Plow. 486.

*Sect. 46.* SECONDLY, That the king, according to the better opinion, may seize the goods, but cannot grant them over, without such an inquisition.

B. Cor. 2. 14. 25.  
 45. 47. 55. 60.  
 1 Rol. 7.  
 2 R. Abr. 184.

As to the THIRD GENERAL HEAD of this Chapter, viz. What disabilities and other inconveniencies offenders of this kind are liable unto.

*Sect. 47.* By 3 Jac. 1. c. 5. s. 8. “ No recusant convict shall practise the common law of this realm as a counsellor, attorney, or solicitor in the same ; nor shall practise the civil law, as advocate or proctor ; nor practise physic ; nor use or exercise the trade or art of an apothecary ; nor be judge, minister, clerk, or steward of or in any court, or bear any office in camp, troop, company of soldiers. or in any ship or fortress, but shall be utterly disabled for the same, and forfeit for every such offence one hundred pounds.”

No recusant convict shall practise the law, or physic, or hold any military or naval situation, on pain of £100 ;

*Sect. 48.* By 3 Jac. 1. c. 5. s. 22. “ Such recusants as shall be convicted at the time of the death of any testator, or at the time of granting of any administration, shall be disabled to be executor or administrator.”

and shall be disabled to be executor or administrator.

“ tors



"tors or administrators; and no such persons shall be guardians to any child, &c."

Persons absent-  
ing church for  
twelve months  
may be bound  
to good behav-  
iour.

*Sect. 49.* And by 23 Eliz. c. 1. it is enacted, "That every person forbearing the church twelve months, shall, on certificate thereof into the king's bench by the ordinary, a justice of assize and gaol-delivery, or a justice of peace of the county where such offender shall dwell or be, be bound with two sufficient sureties in the sum of two hundred pounds at the least to the good behaviour, and so continue bound until such offender shall conform himself, &c."

As to the FOURTH GENERAL HEAD of this chapter, viz. By what means offenders of this nature may be discharged from the said forfeitures, &c.

But if a recusant  
shall, at any  
time before  
judgment, con-  
form, he shall be  
discharged.

*Sect. 50.* By 23 Eliz. c. 1. s. 10. "Every person guilty of the above-mentioned offences, who shall, before he be thereof indicted, or at his arraignment or trial, before judgment, submit and conform himself before the bishop of the diocese where he shall be resident, or before the justices where he shall be indicted, arraigned, or tried (having not before made like submission at any his trial, being indicted for his first like offence), shall upon his recognition of such submission in open assizes, or sessions of the county where such person shall be resident, be discharged of all and every the said offences against the said statute, &c."

If a recusant  
shall conform or  
die, no forfeiture  
of £20 a month,  
or seizure of  
lands shall en-  
sue.

*Sect. 51.* And by 29 Eliz. c. 6. s. 6. "Whosoever any such offender shall make submission, and become conformable, according to the form limited by the statute of 23 Eliz. c. 1. or shall fortune to die, then no forfeiture of twenty pounds for any month, or seizure of the lands of the same offender, from and after such submission and conformity, or death, and full satisfaction of all the arrearages of twenty pounds monthly, before such seizure due or payable, shall ensue, or be continued against such offender, so long as the same person shall continue in coming to divine service, according to the intent of the said statute."

1 Roll. 94.

*Sect. 52.* But this statute being thought not to give sufficient encouragement to such persons to conform to the Church, because by the most favourable construction that could be made, it still obliged them to pay such debts as were due to the king by force of a judgment, it was enacted by 1 Jac. 1. c. 4. s. 2. "That a recusant, conforming himself according to the meaning of the above-mentioned statutes, &c. shall, during such conformity, be discharged of all penalties which he might otherwise sustain by reason of his recusancy."

Raym. 391. 465.  
2 Jon. 187.  
1 Mod. 213.  
1 Roll. 93.  
2 Bulst. 324.

*Sect. 53.* And it hath been resolved, that such conformity may, by force of this statute, be pleaded, as well to the suit of an informer as to that of the king; and that after judgment it will be a good ground for an *audita querela* against an informer; and also may be pleaded against the king before execution awarded."

Savil. 130.  
2 Show. 331.

*Sect. 54.* However, there seems to be no remedy for such a person

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person to get a restitution of such of the profits of his lands as have been actually taken by the king.

*Sect. 55.* It seemed very doubtful, before 1 Jac. 1. c. 4. how far the lands of an heir were chargeable with the forfeitures incurred by his ancestor in respect of his recusancy; but this seems to be for the most part cleared by the said statute 1 Jac. 1. c. 4. s. 3. which enacts, "That if any recusant shall die, his heir being no recusant, every such heir shall be freed and discharged from all and singular the penalties, charges, and incumbrances happening in respect or by reason of his or her ancestor's recusancy; and if at the decease of any such recusant his heir shall be a recusant, and after shall conform and take the oath of supremacy before the archbishop or bishop of the diocese, such heir shall also be freed and discharged."

If an heir be no recusant, or conform, he shall be freed from the penalties of his ancestor's recusancy.

Lane, 92, 93.  
106.  
Cawley, 109,  
110.

By 1 Jac. 1. c. 4. s. 4. "Provided, that if the heir of any recusant shall happen to be within the age of sixteen years at the time of the decease of his or her ancestor, and shall, after he or she attain sixteen years, become a recusant, any such heir shall not be freed and discharged from the penalties, charges, and incumbrances of his or her ancestor's recusancy, until he or she shall submit and conform."

Recusants within sixteen years of age at the death of the ancestor, conforming afterwards, are discharged.

By 1 Jac. 1. c. 4. s. 5. it is further enacted, "That when any seizure shall be had of the two parts of any lands, &c. of any such recusant, as aforesaid, and such recusant shall die (the debt or duty by reason of such recusancy not satisfied), the same two parts shall continue in the king's possession until the residue of the said debt or duty be satisfied. But the king shall not seize or extend any third part descending to any such heirs, or any part thereof, either by reason of the recusancy of his or her ancestor, or of the recusancy of any such heir."

But if two thirds are seized in the life of the ancestor, the lands shall be holden till the penalty is paid.

*Sect. 56.* It seems, by the manifest purport of this statute, that the heir of a recusant, being also a recusant himself, has no remedy, but by conforming, to free his fee-simple lands from any of the forfeitures incurred by the conviction of his ancestor, whether the lands were seized in the ancestor's life or not.

*Sect. 57.* However it is said, that the lands in fee-tail, which he claims from such ancestor, are no way chargeable, after the death of the ancestor, with any forfeitures upon a conviction by proclamation (which has no greater effect than a verdict recorded,) but only with such as are due upon a judgment; which, as it is agreed, charge an heir in tail by force of 33 Hen. 8. c. 39. s. 29. which makes an heir chargeable with the debts of his ancestor by judgment, recognizance, obligation, or other specialty. But perhaps the authority of those opinions may justly be questioned; for though a conviction by proclamation amount not to a judgment, yet surely it cannot be inferior to an obligation. And therefore, perhaps, the books cited in the margin are misreported in this particular, and the more proper distinction may be this:—That an heir in tail is chargeable only with the forfeitures of those months which are contained in the indictment itself, on which a judgment is afterwards given, or a conviction by proclamation recorded, and

Moor, 523.  
1 Roll, 94.  
C. Eliz. 846.  
Cawl. 109, 110.  
150. 159. 152.

Vide sup. s. 32.

## OFFENCES AGAINST RELIGION. Bk. 1.

and not for the months subsequent to such conviction or proclamation, inasmuch as the first seem to be debts appearing of record, the latter not. And the same distinction seems applicable to such lands in tail of an heir who conforms, as were seized in the ancestor's life; but it is clear that such only of his lands as were so seized are in any case liable, whether he claim them in fee-simple or tail.

### *Offence of suffering Absence from Church.*

4 Can. 52.  
3 Burn. E. L.  
220.

Having shewn how far all persons in general are punishable for their own absence from the church, I am now to shew how far they may be punished for the absence of others.

If a master keep a servant or lodger who neglects church a month, he is liable to 10*l.* a month.

*Sect. 1.* By 3 Jac. 1. c. 4. s. 32. "Whosoever shall willingly maintain, retain, relieve, keep, or harbour, in his house, any servant, sojourner, or stranger, who shall not go to some church or chapel, or usual place of common prayer, to hear divine service, but shall forbear the same for the space of one month together, not having a reasonable excuse, &c. shall for every month that he shall keep such servant, &c. forfeit ten pounds."

If a master, &c. retain any who neglect church, he is liable.

*Sect. 2.* By 3 Jac. 1. c. 4. s. 33. "Whosoever shall retain or keep in his service, fee, or livery, any person which shall not go to or repair to some church, chapel, or usual place of common prayer, to hear divine service, but shall forbear the same by the space of one month together, shall forfeit ten pounds for every month, &c."

But a son or a daughter who charitably keep a poor father or mother, shall not be liable.

*Sect. 3.* But by 3 Jac. 1. c. 4. s. 34. it is provided, "That this act shall not in any wise extend to punish any person for maintaining, retaining, relieving, keeping or harbouring his father or mother wanting, without fraud or covin, other habitation or sufficient maintenance; or the ward of any such person; or any person that shall be committed by authority to the custody of any by whom they shall be so maintained, retained, relieved, &c."

The offence may be tried either at sessions or in the superior courts.

*Sect. 4.* And by 3 Jac. c. 4. s. 36. "This offence may be inquired of, heard, and determined before the king's bench, at the assizes, gaol delivery, and in general or quarter-sessions of the county or place where the offence shall be committed."

### *Of Popish Recusancy.*

And now we are come to offences against the established church more immediately relating to those of the Popish Religion.

Roman Catholics may make the following declaration on oath.

† But as most of those penalties to which Popish Recusants are exposed may now be avoided, by complying with the injunctions of a modern act of parliament, it may be necessary to premise, that, by 31 Geo. 3. c. 32. s. 3. "Persons professing the Roman Catholic religion may personally appear in any of his majesty's courts of Chancery, King's Bench, Common Pleas, or Exchequer, at Westminster, or in any court of general quarter-sessions of and for the county, city, or place, where such person shall reside, and there in open court, between the  
" hours

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"hours of nine in the morning and two in the afternoon, take, make, and subscribe the following declaration and oath, viz.

"I, A. B., do hereby declare, that I do profess the Roman Catholic religion. Declaration.

"I, A. B., do sincerely promise and swear, That I will be faithful and bear true allegiance to his majesty King George the Third, and him will defend to the utmost of my power against all conspiracies and attempts whatever that shall be made against his person; crown, or dignity; and I will do my utmost endeavour to disclose and make known to his majesty, his heirs, and successors, all treasons and traitorous conspiracies which may be formed against him or them: And I do faithfully promise to maintain, support, and defend, to the utmost of my power, the succession of the crown; which succession, by an act intitled, *An act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject*, is and stands limited to the princess Sophia, electress and duchess dowager of Hanover, and the heirs of her body, being Protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the crown of these realms: And I do swear, that I do reject and detest, as an unchristian and impious position, that it is lawful to murder or destroy any person or persons whatsoever, for or under pretence of their being heretics or infidels; and also that unchristian and impious principle, that faith is not to be kept with heretics or infidels: And I further declare, that it is not an article of my faith, and that I do renounce, reject, and abjure the opinion, that princes excommunicated by the pope and council, or any authority of the See of Rome, or by any authority whatsoever, may be deposed or murdered by their subjects, or any person whatsoever: And I do promise, that I will not hold, maintain, or abet any such opinion, or any other opinions contrary to what is expressed in this declaration: And I do declare, that I do not believe that the pope of Rome, or any other foreign prince, prelate, state, or potentate, hath, or ought to have, any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this realm: And I do solemnly, in the presence of God, profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatever; and without any dispensation already granted by the pope, or any authority of the See of Rome, or any person whatever; and without thinking that I am or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the pope or any other person or authority whatsoever shall dispense with or annul the same, or declare that it was null or void."

Oath of allegiance, obedience, and abjuration, to be taken by persons professing the Catholic faith.

By 31 Geo. 3. c. 32. s. 3. "The said declaration and oath shall be subscribed by the person taking and making the same with the name at length, if such person can write, or with his mark, the name being written by the officer, where such per-

The officer of the court shall deliver certificates of the declaration and

oath having been made, which shall be sufficient evidence.

"You cannot write, such person or such officer, as the case may be, adding the title, addition, and place of abode of such person, and shall remain in such court of record; and the proper officer of such court respectively with whom the custody of such record shall remain, shall make, subscribe, and deliver a certificate of such declaration and oath having been duly made, taken, and subscribed, to the person who shall have so made, taken, and subscribed the same, if the same shall be demanded, immediately, for which certificate there shall be paid no greater fee or reward than two shillings; and such certificate, upon proof of the certifier's hand, and that he acted as such officer, shall be competent and sufficient evidence of such person's having duly made, taken, and subscribed such declaration and oath, unless the same shall be falsified."

Lists of persons who have taken the oath, to be transmitted to the privy council.

† By 31 Geo. 3. c. 32. s. 2. "The said officer, with whom such records are kept as aforesaid, shall yearly, on or before the 25th December, transmit to the clerk of his majesty's most honourable privy council, lists of the persons, with their titles, additions, and places of abode, who shall have made and subscribed such declaration and oath in the preceding year."

No person taking the oath above-mentioned shall be prosecuted on any statute against nonconformity in worship.

† And by 31 Geo. 3. c. 32. s. 3. "No person professing the Roman Catholic religion, who shall take and subscribe the oath therein appointed to be taken and subscribed, shall be convicted or prosecuted upon, or shall be liable to be prosecuted upon, the said statutes of 1 Eliz. c. 2.; the 23 Eliz. c. 1.; the 29 Eliz. c. 6.; the 35 Eliz. c. 2.; the 1 Jac. 1. c. 4.; the 3 Jac. 1. c. 4.; the 3 Jac. 1. c. 5.; or the 7 Jac. 1. c. 6.; or any of them, or upon any other statute, or any other law of this realm, by indictment, information, action of debt, or otherwise; or shall be prosecuted in any ecclesiastical court for not resorting or repairing to his or her parish church or chapel, or some other usual place of common prayer, to hear divine service, and join in public worship according to the forms and rites of the Church of England, as by law established."

But, for the better understanding of this subject, I shall consider, FIRST, The above mentioned offence of not coming to church, so far as it particularly concerns Roman Catholics. SECONDLY, The offence of saying or hearing mass, or other Popish service. THIRDLY, The offence of not making a declaration against popery. FOURTHLY, The offence of promoting or encouraging the Popish religion.

Skin. 99.  
Keb. 7.  
3 Burn. E. L.  
120.

And FIRST, as to the said offence of not coming to church, so far as it particularly concerns those of the Popish religion, who in respect hereof are commonly called Popish recusants; I shall consider, *First*, How far such recusants are punishable in their own persons. *Secondly*, How far they make others liable to be punished.

I. How far popish recusants are punishable in their own persons.

It is to be observed, that they are not only liable to all the forfeitures and disabilities and other inconveniences mentioned in the

the former section; "Of the Offence in coming to Church," but also to many particular disabilities, restraints, forfeitures, and other inconveniences, to which no others are liable.

**FIRST,** They are put under the following disabilities: 1. That of bringing an action. 2. That of presenting to a church. 3. That of bearing any public office or charge. 4. That of claiming any part of a husband's personal estate. 5. That of claiming an estate by courtesy, or by way of dower, after a marriage against law.

**SECONDLY,** They are put under the following restraints: 1. From going above five miles from home. 2. From coming to court. 3. From keeping arms. 4. From coming within ten miles of London.

**THIRDELY,** They are liable to the following forfeitures: 1. That of two parts of a jointure or dower. 2. That of twenty pounds for not receiving the sacrament yearly after conformity. 3. That of one hundred pounds for an unlawful marriage. 4. That of one hundred pounds for an omission of lawful baptism. 5. That of twenty pounds for an unlawful burial.

**LASTLY,** They are subject to the following inconveniences: 1. That their houses may be searched for reliques, whether they be men or women. 2. That if they be women and married, they may be committed, &c.

**Sect. 1.** As to the **FIRST** of the said disabilities, viz. That of bringing an action, it is enacted by 3 Jac. 1. c. 5. s. 11, 12. "That every popish recusant convict shall stand to all intents and purposes disabled, as a person lawfully excommunicated, and as if such person had been so denounced and excommunicated according to the laws of this realm, until he or she shall conform, &c. And that every person sued by such person so disabled, may plead the same in disabling of such plaintiff, as if he or she were excommunicated by sentence in the ecclesiastical court. Except the action of such recusant do concern some hereditament or lease, which is not to be seised into the king's hands by force of some law concerning recusancy."

Popish recusant convicts are disabled to bring actions

See 1 Jac. 1. c. 4.

11 Mod. 357. 366.

Ray. 391. 2 Jones, 197.

4 Com. 55. 124.

In the exposition hereof it hath been resolved,

**Sect. 2. First,** That the plea of such a conviction, like all other pleas in disability, ought to be pleaded before imparlance, and also to conclude with a demand, "if the plaintiff shall be answered."

3 Lev. 208.

Litch. 176.

Hed. 18.

8 Mod. 43.

**Sect. 3. Secondly,** That such plea ought also to shew before what justices the conviction was, that the court may know where to send for a certificate thereof, if it be denied; and also that the record itself, or at least a certificate thereof, ought to be immediately produced, according to the general rule of the law as to all dilatory pleas grounded on records.

Noy. 89.

Litch. 176.

3 Lev. 333.

**Sect. 4. Thirdly,** That if, after such a plea, it be certified that the plaintiff hath consented, and ordered to give in such and such evidence, the defendant be released and be convicted.

Hed. 176.

If defendant be released and be convicted

convict again, the defendant cannot plead the same in disability a second time.

3 Lat. 1117.  
3 Lev. 338.  
334. 11, 14.

*Sect. 5. Fourthly,* That it must appear, either from the conviction itself, or by proper averments, that the plaintiff is convicted of popish recusancy, because no recusants, except popish ones, are within the said clause; however, that this is sufficiently set forth by alleging that the plaintiff, being *popalis recusans*, was indicted and convicted *secundum formam statuti, &c.*

Bul. 155, 156.  
S. P. 1 St. Tr.  
268.  
3 St. Tr. 425.  
Cawley, 216.  
Vide 1 Com.  
Dig. 13, and 4.  
Com. Dig. 539.  
as to the law in  
general upon  
this head.

*Sect. 6.* And some have gone so far as to hold, that all popish recusants convict, may be taken up by the writ *de excommunicato capiendo*, and that they are not be admitted as competent witnesses in any cause; but this seems to be a construction over severe; for inasmuch as this, like all other penal statutes, ought to be construed strictly, and the words thereof are no more than, "that such persons shall stand disabled, &c. as persons lawfully "excommunicate, &c." and the purport thereof may be fully satisfied by the disability to bring any action, it seems to be too rigorous to carry them farther.

Trustees of a  
popish recusant  
convict are dis-  
abled from pre-  
siding to a liv-  
ing without no-  
tice.

3 Barn. & L.  
256.

*Sect. 7.* As to the SECOND of the said disabilities, *viz.* That of presenting to a church, the same being at this day extended by 12 Anne, c. 2. to all persons making profession of the popish religion, I shall refer the reader, for the matters relating to this head, to the section concerning "Promoting the Popish Religion," (*post*, p. 399.) wherein is shewn how penal it is, barely to profess the said religion; and I shall only take notice in this place, that, by 1 Will. and Mary, c. 26. s. 4. "If the trustee, "mortgagee, or grantee, of any avoidance whereof the trust shall "be for any popish recusant convict, shall present without giving "notice in writing of the avoidance to the university, &c. within "three months after the avoidance, he forfeits five hundred "pounds."

Popish re-  
cusants disabled  
to bear any

16 Geo. 2. c. 30.  
c. 3.  
30 Geo. 2. c. 52.  
s. 46.

*Sect. 8.* As to the THIRD of the said disabilities, *viz.* That of bearing any public office or charge, it is enacted by 3 Jac. 1. c. 5. s. 9. "That no popish recusant convict shall exercise any "public office or charge in the commonwealth, but shall be "utterly disabled to exercise the same by himself or his deputy."

*Sect. 9.* It is observable, that this clause is more strongly penned than that which immediately precedes it, relating to all recusants in general, as to the following particulars: 1. That this extends to all public offices and charges in general, whereas the former extends only to those which are particularly enumerated. 2. That this expressly disables a popish recusant to exercise such an office by himself or his deputy, but the other says nothing at all of the exercise of an office by a deputy.

+ Papists were also disabled by the statutes 7 and 8 Will. 3. c. 24. and 1 Geo. 1. c. 23. from practising in any manner in courts of justice as counsellors, barristers, attorneys, clerks, or notaries; wit-

ing taken the oaths and declara-  
tion now in use by the said courts and  
respective magistrates, and appointed to be taken and  
administered by persons who are not members of the church of England.

attorney, solicitor, clerk, or notary, as in the said act  
 tively is mentioned, shall be no longer put or  
 or required to be taken by, any person  
 Catholic religion, as a qualification or requisite to enable him  
 to act in the capacities aforesaid, or any of them, but the oath  
 of allegiance, abjuration, and declaration  
 pointed to be taken and subscribed, shall be administered  
 taken, and subscribed to and by persons professing the Roman  
 Catholic religion, and acting or requiring to act in the capaci-  
 ties aforesaid, or any of them, in the stead and place of the said  
 oaths and declaration; and every of them; and in order thereto  
 the oath of allegiance, abjuration, and declaration, herein be-  
 fore appointed to be taken and subscribed, may and shall be  
 administered, taken, and subscribed in the same courts, and  
 may and shall be registered in the same manner, as the oaths  
 and declaration in the room of which it is hereby substituted,  
 are by the acts so prescribing the same oaths and declaration  
 respectively as aforesaid appointed to be administered, taken,  
 subscribed, and registered; and when so taken, subscribed, and  
 registered, shall, for the purpose of enabling persons professing  
 the Roman Catholic religion to act in the capacities aforesaid,  
 or any of them, have the same effect and operation, to all in-  
 tents, constructions, and purposes whatsoever, as the oaths and  
 declaration in the room of which it is hereby substituted."

By 31 Geo. 3: c. 32. s. 7. it is also enacted, "That if any  
 person professing the Roman Catholic religion shall hereafter  
 be chosen or otherwise appointed to bear the office of High  
 Constable, or petty constable, church-warden, overseer of the  
 poor, or any other parochial or ward office, and such person  
 shall scruple to take upon him any of the said offices, in regard  
 of the oaths or any other matter or thing required by the law  
 to be taken or done in respect of such office, every such per-  
 son shall and may execute such office or employment by a suf-  
 ficient deputy, by him to be provided, that shall comply with  
 the laws in this behalf; but the said deputy shall be allowed  
 and approved by such person or persons, in such manner as  
 such officer or officers respectively should by law have been  
 allowed and approved."

Sect. 10. As to the FOURTH of the said disabilities, viz. that  
 of claiming any part of a husband's personal estate, it is enacted  
 by 3 Geo. 1: c. 5, s. 10, "That every woman, being a popish  
 recusant convict (her husband not standing convicted of popish  
 recusancy), which shall not conform herself and remain con-  
 formed, but shall forbear to repair to some church or usual  
 place of common prayer, and there hear divine service and ser-  
 mon, if any then be, and receive the sacrament of the Lords  
 according to the laws of this realm, by the space of  
 year at before the death of her said

husband, shall be disabled to be executor or administrator of her  
 husband's estate, and also to have or demand any part of her said  
 husband's personal estate."

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Vide ante, p. 341

Roman Catho-  
 lic may exercise  
 the office of  
 constable, &c.  
 by deputy.

Female popish  
 recusant con-  
 vict, who shall

infringe the  
 said statute, shall  
 forfeit one-third  
 part of the  
 estate.

See also 7 J. 1.  
 ch. 6.

For usage  
 herein is  
 who



"shall be married otherwise than according to the church of England."

Popish recusant convicts married other than according to the rites of the church, disabled to hold any estate by courtesy or by dower.

*Sect. 11.* As to the *FIFTH* of the said disabilities, viz. that of claiming an estate by the courtesy, or by way of dower, &c. it is enacted by 3 Jac. 1. c. 5. s. 13. "That every man who, being a popish recusant convict, shall be married otherwise than in some open church or chapel, and otherwise than according to the orders of the Church of England, by a minister lawfully authorised, shall be disabled to have any estate, as tenant by the courtesy; and that every woman, being a popish recusant convict, who shall be married in other form than as aforesaid, shall be disabled to claim her dower, or jointure, or widow's estate, &c."

Popish recusant convicts restrained from removing above five miles from home.

*Sect. 12.* As to the *FIRST* of the above-mentioned restraints, viz. that from going above five miles from home, &c. it is enacted by 3 Eliz. c. 2. and 3 Jac. 1. c. 5. s. 6, 7. "That every popish recusant convict shall repair to his place of dwelling, &c., and not remove above five miles from thence, unless he be urged by process, &c., or have a license from the privy council, &c., or under the hands and seals of four justices of peace, with the assent in writing of the lieutenant of the county, or of the bishop, &c. (every license of which kind, by justices of peace, must express both the particular cause and the time for which it is given, and ought not to be granted without a previous oath of some reasonable cause,) under pain of forfeiting all his goods and hereditaments (whether freehold or copyhold) for his life, or of abjuring the realm if he be not worth twenty marks a year, or forty pounds in goods, unless he recant before conviction, and also continue conformable."

3 Burn, E. L. 162. 165.

See Cawl. 128, 129, &c. 207, 208.

C. Jac. 352.  
1 Roll. 108.  
Moor, 836.

*Sect. 13.* NOTE, that the privy council may grant such license without any special cause or oath, &c., but that the justices of peace cannot. And it hath been resolved, that in pleading a license of justices of peace, you must expressly shew that it was made under their hands and seals, and also set forth the cause in particular for which it was granted, and the time for which it was limited, and that the party was sworn to the truth of such cause, &c.

C. Jac. 352.  
1 Roll. 108.  
Moor, 836.

*Sect. 14.* It is said, that if the same person be both a justice of peace and a lieutenant, he cannot both join in a license as justice of peace, and also give his assent as lieutenant, but can only act in one capacity.

Cawl. 130, 131  
C. Eliz. 212.

*Sect. 15.* It seems that the miles shall be computed according to the English manner, allowing 5280 feet, or 1760 yards, to each mile, and that the same shall be reckoned, not by straight lines, as a bird or arrow may fly, but according to the nearest and most usual way.

Popish recusant convicts restrained from appearing in the presence of the king

*Sect. 16.* As to the *SECOND* of the above-mentioned restraints, viz. that which relates to the coming to court, it is enacted by 3 Jac. 1. c. 5. s. 2. "That no popish recusant convict shall come into the court or house where the king, or his heir apparent, shall be, unless he be commanded so to do by the king, upon pain of one hundred pounds, &c."

+ And

† And it is further enacted by 30 Car. 2. st. 2. s. 5, 6. "That every peer of this realm and member of the House of Peers, and every peer of Scotland or Ireland, being of the age of one and twenty years or upwards, not having taken the said oaths, and made and subscribed the declaration; and every member of the House of Commons, not having taken the oaths and subscribed the declaration; and every popish recusant convict, who shall come advisedly into, or remain in the presence of the king and queen, or shall come into the court or house where they, or any of them, reside, shall be disabled to hold or execute any office or place of trust, civil or military, or to sue in law or equity, or to be an executor, &c., or capable of any legacy or deed of gift, and shall forfeit for every wilful offence five hundred pounds, unless such person do, within the term next after such his coming or remaining, take the oaths of allegiance and supremacy, and make the declaration against transubstantiation and the invocation of saints, &c. in the court of Chancery."

on pain of being disabled, &c.

† But by 31 Geo. 3. c. 32. s. 20. it is enacted, "That no peer of Great Britain or Ireland, or member of the House of Peers of Great Britain, or of the kingdom of Ireland, professing the Roman Catholic religion, who shall take and subscribe the oath of allegiance, abjuration and declaration, hereinbefore appointed to be taken and subscribed, shall be liable to be prosecuted for such offence in the said act 30 Car. 2. st. 2. or be liable to any of the pains, penalties, forfeitures and disabilities, for breach of the provision in the said clause contained, or be otherwise deemed to fall within, or be affected by, any part of the said provision."

But no Catholic peer who shall have taken the appointed oath shall be liable to prosecution under the statute 30 Car. 2. st. 2. s. 5.

Sect. 17. As to the THIRD of the above-mentioned restraints, viz. that which relates to the keeping of arms, it is enacted by 3 Jac. 1. c. 5. s. 27, 28, 29. "That all such armour, gunpowder, and munition, of whatsoever kinds, as any popish recusant convict shall have in his own house or elsewhere, or in the possession of any other at his disposition, shall be taken from him by warrant of four justices of peace at their general or quarter-sessions (except such necessary weapons as shall be allowed him by the said four justices for the defence of his person or house); and that the said armour, &c. so taken, shall be kept at the cost of such recusant, in such place as the said four justices, at their said sessions, shall appoint; and that if any such recusant having such armour, &c., or if any other person who shall have any such armour, &c. to the use of such recusant, shall refuse to discover to the said justices, or any of them, what armour he hath, or shall let or hinder the delivery thereof to any of the said justices, or to any other person authorised by their warrant to take the same, that then every person so offending shall forfeit his said armour, &c., and also be imprisoned for three months without bail, by warrant from any justices of peace of such county." And it is further enacted, "That notwithstanding the taking away such armour, &c. yet such recusant shall be charged with the maintaining of the same, and with the providing of a horse, &c. in such sort as others

Popish recusant convicts restrained from having any gunpowder and munition in their custody.

"others of his majesty's subjects." Also it is further enacted by 1 Will. and Mary, c. 15. "That no reputed papist, refusing to make the said declaration against popery, mentioned in 30 Car. "shall keep arms," as it is set forth more at large in the section "Of not making a Declaration against Popery."

**Popish recusant convicts restrained from living within ten miles of London, except qualified under the statute 31 Geo. 3. c. 32.**

*Sect. 18.* As to the **FOURTH** of the above-mentioned restraints, *viz.* that which relates to the coming within ten miles of London, it is enacted by 3 Jac. 1. c. 5. s. 4, 5. "That no popish recusant, &c. shall remain within the compass of ten miles of London, under pain of one hundred pounds, except such persons as, at the time of the said act, did use some trade, mystery, or manual occupation, in London, &c., and such as shall have their only dwelling in London, &c." Also reputed papists refusing to make the declaration mentioned in the precedent sections, are to be removed from London, &c. by force of 1 Will. and Mary, c. 9.

† But by 31 Geo. 3. c. 32. s. 19. this last-mentioned act shall not extend to any person professing the Roman Catholic religion, who shall take and subscribe the oath of allegiance, abjuration and declaration, therein appointed (*a*) to be taken and subscribed.

(*a*) See ante, p. 385.

**Female popish recusant convict, who shall not conform within twelve months before the death of her husband, shall forfeit two-thirds of her jointure.**

But see the 31 Geo. 3. c. 32. page 386.

*Sect. 19.* As to the **FIRST** of the above-mentioned forfeitures, *viz.* that of two parts of a jointure or dower, it is enacted by 3 Jac. 1. c. 5. s. 10. "That every married woman, being a popish recusant convict, (her husband not standing convicted of popish recusancy,) who shall not conform herself, and remain conformed, but shall forbear to repair to some church, or usual place of common prayer, and there to hear divine service and sermon, if any then be, and receive the sacrament of the Lord's Supper, according to the laws of this realm, within one year next before the death of her said husband, shall forfeit to the king the profits of two parts of her jointure and dower of any hereditaments of her said husband, &c."

**Popish recusant convict, who shall not receive the sacrament, &c. forfeits £20.**

*Sect. 20.* As to the **SECOND** of the above-mentioned forfeitures, *viz.* that of twenty pounds, &c. for not receiving the sacrament yearly after conformity, it is enacted by 3 Jac. 1. c. 4. s. 2, 3. "That if any popish recusant convict, who hath conformed himself to the church, &c., shall not receive the sacrament in his own parish church, &c. within one year after his conformity, he shall forfeit twenty pounds, and for the second year forty pounds, and for every year after, sixty pounds, &c."

**Popish recusant married other than according to the Church of England, forfeits £100.**

*Sect. 21.* As to the **THIRD** of the above-mentioned forfeitures, *viz.* that of one hundred pounds for an unlawful marriage, it is enacted by 3 Jac. 1. c. 5. s. 13. "That every popish recusant convict, who shall be married to a woman who is no inheritor otherwise than according to the Church of England, shall forfeit one hundred pounds."

**Popish recusant forfeits £100 for unlawful baptism.**

*Sect. 22.* As to the **FOURTH** of the above-mentioned forfeitures, *viz.* that of one hundred pounds for the omission of a lawful baptism, it is enacted by 3 Jac. 1. c. 5. s. 14. "That every popish recusant who shall not cause his or her child to be baptized, within one month after its birth, by a lawful minister, &c. shall forfeit one hundred pounds, &c."

*Sect.*

## Ch. 26. OFFENCES AGAINST RELIGION.

*Sect. 23.* As to the FIFTH of the above-mentioned forfeitures, viz. that of twenty pounds for an unlawful burial, it is enacted by 3 Jac. 1. c. 5. s. 15. "That if any popish recusant, not being ex-communicate, shall be buried in any other place than in the church or churchyard, or not according to the ecclesiastical laws of this realm, the executors, &c. of such recusant, knowing the same, or the party that causeth him to be so buried, shall forfeit twenty pounds, &c."

Popish recusant forfeits £20 for unlawful burial.

*Sect. 24.* As to the inconvenience to which all such offenders are liable, viz. that of having their houses searched for reliques, &c. it is enacted by 3 Jac. 1. c. 5. s. 26. "That any two justices of peace, and all mayors, bailiffs, and chief officers of cities and towns corporate, in their respective jurisdictions, may search the house and lodgings of every popish recusant convict for popish books and reliques; and that if any altar, pix, beads, pictures, or such like popish relique, or any popish book, be found in the custody of such person, as, in the opinion of the said justices, &c. shall be unmeet for him or her to have or use, it shall be defaced and burnt, if it be meet to be burnt; and if it be a crucifix, or other relique of any price, the same shall be defaced at the general quarter-sessions in the county where it shall be found, and then restored to the owner."

Justices of the peace and magistrates may search the houses of popish recusant convicts for reliques.

*Sect. 25.* As to the inconvenience to which such offenders, being *femes covert*, are liable, viz. that of being committed, it is enacted by 7 Jac. 1. c. 6. s. 28. "That if any married woman, being a popish recusant convict, shall not, within three months after her conviction, conform herself, and repair to church and receive the sacrament, &c., she may be committed to prison by one of the privy council, or by the bishop if she be a baroness, or if under that degree by two justices of peace, whereof one to be of the *quorum*, there to remain till she perform, &c., unless the husband will pay to the king ten pounds a month for her offence, or else the third part of all his lands, &c., at the choice of the husband, &c."

If a married woman convicted of recusancy shall not conform within three months, her husband shall pay £10 a month.

### II. How far such recusants make others liable to be punished.

*Sect. 26.* It is to be observed that the husband of a popish recusant convict is not only liable to the forfeiture of ten pounds a month for the absence of any of his servants from church, by force of 1 Jac. 1. which is set forth more at large in the foregoing section, but is also "utterly disabled," by the ninth paragraph of the said statute, "to exercise any public office or charge in the commonwealth by himself, or by his deputy, (except such husband himself, and his children, which shall be above the age of nine years, abiding with him, and his servants in the household, shall once every month at least, not having any reasonable excuse to the contrary, repair to some church or chapel usual for divine service, and there hear divine service; and the said husband, and such his children and servants as are of meet age, receive the sacrament of the Lord's Supper at such times as are limited by the laws of this realm, and do bring up his said children in the true religion)."

Popish recusant convict may be punished for harbouring recusants, unless he be qualified under 31 Geo. 3. c. 39.

The house of a papist may be searched for books.

But no person qualified under 31 Geo. 3. c. 32. shall be liable for harbouring Roman Catholics;

or be prosecuted on any of the foregoing statutes for being a papist, or reputed papist;

or for not resorting to church to hear service according to the Liturgy of the Church of England.  
(a) Ante, p. 386.

No person shall say mass.  
Dyer, 203.  
4 Comm. 56.  
87. 115.

3 Jac. 1. ch. 5.  
2 Show. 216.

Except in the house of a foreign minister

or except such person shall have taken the oath required by 18 Geo. 3. c. 60.

**Sect. 27.** Also it is further enacted by the said statute of 3 Jac. 1. c. 5. s. 26. "That the house of one whose wife is a popish recusant convict may be searched by any two justices of peace, &c. for popish books, &c."

† **Sect. 28.** But now it is enacted by the 31 Geo. 3. c. 32. "That no person professing the Roman Catholic religion, who shall take and subscribe the oath before-mentioned, shall be convicted or prosecuted upon any of the statutes for keeping or having any servant, or other person, being a papist, or reputed papist, or person professing the popish religion, who shall not so resort or repair to his or her parish church or chapel, or some such other usual place of common prayer."

† **Sect. 29.** And by the said statute, 31 Geo. 3. c. 32. s. 4. "No person who shall take and subscribe the oath therein appointed to be taken and subscribed, shall be presented, indicted, sued, impeached, prosecuted, or convicted, in any civil or ecclesiastical court of this realm, for being a papist, or a reputed papist."

† **Sect. 30.** And by the said statute, 31 Geo. 3. c. 32. s. 3. "No person professing the Roman Catholic religion, who shall take and subscribe the said oath, as before-mentioned, (a) shall be convicted or prosecuted upon, or liable to be prosecuted upon, any of the before-mentioned statutes; or upon any other statute, by indictment, information, action of debt, or otherwise; or in any ecclesiastical court, for not resorting to his or her parish church, or some other usual place of common prayer, to hear divine service according to the rites of the Church of England."

#### *Of saying or hearing Mass.*

As to the offence of saying or hearing mass, it is enacted by 25 Eliz. c. 1. s. 4. "That every person who shall say or sing mass, being thereof lawfully convict, shall forfeit two hundred marks, and be committed to prison in the next gaol, there to remain by the space of one year, and from thenceforth till he have paid the sum of two hundred marks; and that every person who shall willingly hear mass, shall forfeit the sum of one hundred marks, and suffer a year's imprisonment."

**Sect. 2.** And it is enacted by 11 and 12 Will. 3. c. 4. s. 2, 3, 4, 5. "That every person who shall apprehend any popish bishop, priest, or jesuit, and prosecute him to conviction, for saying mass, or exercising any other part of the function of a popish bishop or priest, shall receive one hundred pounds of the sheriff; and that every such popish bishop, &c. (except, being a foreigner, he be entered in the secretary's office, and officiate only in the house of a foreign minister) shall be adjudged to perpetual imprisonment."

† **Sect. 3.** But by 18 Geo. 3. c. 60. it is enacted, "That the above-mentioned clauses of 11 and 12 Will. 3. are repealed," provided, by s. 5. "that such popish bishop, priest, jesuit, or schoolmaster, shall have taken and subscribed the oath (in the words as recited in the said statute of Geo. 3.) before he shall have been apprehended, or any prosecution commenced against him."

† **Sect.**

† Sect. 4. And by 31 Geo. 3. c. 32. s. 4. it is enacted, "That no person who shall take and subscribe the oath herein-before appointed to be taken and subscribed, in manner hereby required, shall be presented, indicted, sued, impeached, prosecuted, or convicted, in any civil or ecclesiastical court of this realm, for being a papist, or reputed papist, or for professing or being educated in the popish religion, or for hearing or saying mass, or for being a priest or deacon, or entering or belonging to any ecclesiastical order or community of the Church of Rome, or for being present at, or performing or observing any rite, ceremony, practice, or observance of the popish religion, or maintaining or assisting others therein."

And no person who shall have taken the oath appointed by 31 Geo. 3. c. 32. shall be prosecuted on the above statutes for either hearing or saying mass.

† Sect. 5. By 31 Geo. 3. c. 32. s. 5. "Provided always, that no place of congregation, or assembly for religious worship, shall be permitted or allowed by this act, until the place of such meeting shall be certified to the justices of the peace, at the general or quarter-sessions of the peace for the county, city, or place in which such meeting shall be held, and until the place of such meeting shall be recorded at the said general or quarter-sessions; the clerk of the peace whereof is hereby required to record the same, and to give a certificate thereof to such person as shall demand the same, for which there shall be no greater fee or reward taken than the sum of six-pence; and that no person in holy orders, or pretended holy orders, whether as priest, or as a minister of any other higher rank or order, shall perform any ecclesiastical function, or otherwise officiate in any such place of meeting, until his name, and his description, as a priest or minister, shall have been recorded at the quarter or other general-session of the peace for the county, or other division or place, in which such place of meeting shall be situate, by the clerk of the peace of the said court; who is hereby required to record such name and description accordingly, upon demand by such person, and upon payment of six-pence as a fee or reward, and shall give a certificate thereof to such person as shall from time to time demand the same, for which certificate no greater fee or reward shall be taken than two shillings; and no priest or minister of any rank, in holy orders, or pretended holy orders, who shall officiate in any such place of meeting, not so recorded as aforesaid, shall be deemed to be within the benefit of this act, for any purpose whatsoever."

But no assembly for religious worship shall be allowed under this act till it shall be certified to the quarter-sessions, &c.

nor shall any person perform any ecclesiastical function therein until his name, &c. be recorded by the clerk of the peace.

† Sect. 6. By 31 Geo. 3. c. 32. s. 6. "Provided, that if any assembly of persons professing the Roman Catholic religion shall be had in any place for religious worship with the doors locked, barred, or bolted, during any time of such meeting together, all and every person and persons who shall come to, or be at, such meeting, shall not receive any benefit from this law, but, notwithstanding having taken the aforesaid oath of allegiance, abjuration, and declaration, shall, from the time of conviction, be liable to the same pains and penalties for such their meeting, as if this act had not been made."

No such place of assembly to be locked during the meeting.

† Sect. 7. By 31 Geo. 3. c. 32. s. 9. "Provided always, that all the laws made and provided for the frequenting of divine service on the Lord's day, commonly called Sunday, shall be

Laws for frequenting of divine service to continue in force.

"still

‘ still in force, and executed, against all persons who shall offend  
 ‘ against the said laws, unless such persons shall come to some  
 ‘ congregation or assembly of religious worship permitted by  
 ‘ this act, or the toleration act.”

Penalty on per-  
 sons disturbing  
 congregations,  
 or misusing  
 priests.

† Sect. 8. By 31 Geo. 3. c. 32. s. 10. it is further enacted,  
 ‘ That if any person or persons do and shall, willingly and of  
 ‘ purpose, maliciously or contemptuously come into any place of  
 ‘ congregation, or assembly of religious worship, permitted by  
 ‘ this act, and disquiet or disturb the same, or misuse any priest,  
 ‘ minister, preacher, or teacher therein, such person or persons,  
 ‘ upon proof thereof, before any justices of the peace, by two or  
 ‘ more sufficient witnesses, shall find two sureties of the peace,  
 ‘ to be bound, by recognizance, in the penal sum of fifty pounds,  
 ‘ and, in default of such sureties, shall be committed to prison,  
 ‘ there to remain till the next general or quarter-sessions; and,  
 ‘ upon conviction of the said offence, at the said general or quar-  
 ‘ ter-sessions, shall suffer the pain and penalty of twenty pounds,  
 ‘ to the use of the king’s majesty, his heirs and successors.”

The act not to  
 extend to Ro-  
 man Catholic  
 ecclesiastics in  
 certain cases;

† Sect. 9. By 31 Geo. 3. c. 32. s. 11. “ Provided always, that  
 ‘ no benefit in this act contained shall extend, or be construed to  
 ‘ extend, to any Roman Catholic ecclesiastic permitted by this  
 ‘ act, who shall officiate in any place of congregation or assembly  
 ‘ for religious worship permitted by this act, with a steeple and  
 ‘ bell, or at any funeral in any church or churchyard, or who  
 ‘ shall exercise any of the rites or ceremonies of his religion, or  
 ‘ wear the habits of his order, save within some place of congre-  
 ‘ gation or assembly for religious worship permitted by this act, or  
 ‘ in a private house, where there shall not be more than five per-  
 ‘ sons assembled, besides those of the household, or who shall  
 ‘ not, previously to his so officiating or exercising his functions as  
 ‘ aforesaid, have taken and subscribed the oath of allegiance, ab-  
 ‘ juration, and declaration, hereby appointed to be taken as afore-  
 ‘ said.”

nor to exempt  
 Roman Catho-  
 lics from paying  
 tithes, &c.;

† Sect. 10. By 31 Geo. 3. c. 32. s. 12. Provided also, “ That  
 ‘ nothing herein contained shall be construed to exempt any  
 ‘ such person professing the Roman Catholic religion from pay-  
 ‘ ing tithes or parochial duties, or any other duties to the church  
 ‘ or minister, or from any prosecution in any ecclesiastical court,  
 ‘ or elsewhere, for the same; or to repeal any part of the Mar-  
 ‘ riage Act, or any parts of any other statutes concerning mar-  
 ‘ riages; or to give any ease, benefit, or advantage, to any person  
 ‘ who shall, by preaching, teaching, or writing, deny or gainsay  
 ‘ the oath of allegiance, abjuration, and declaration, herein before  
 ‘ mentioned and appointed to be taken as aforesaid, or the decla-  
 ‘ rations or doctrines therein contained, or any of them; or to re-  
 ‘ peal or affect any law now in force concerning the right or suc-  
 ‘ cession to, or the limitation of, the crown.”

nor to repeal  
 any part of  
 26 Geo. 2. cap.  
 33, &c.

Ministers of any  
 Roman Catholic  
 congregation  
 who shall take  
 the aforesaid  
 oath, exempted  
 from serving on  
 juries, &c.

† Sect. 11. By 31 Geo. 3. c. 32. s. 8. “ Every priest, or other  
 ‘ person in holy orders, or pretended holy orders, being a minis-  
 ‘ ter, teacher, or preacher of any congregation of persons profess-  
 ‘ ing the Roman Catholic religion, who shall take and subscribe  
 ‘ the aforesaid oath of allegiance, abjuration, and declaration, in  
 ‘ manner

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"manner hereinbefore prescribed, shall from thenceforth be exempted from serving upon any jury, or from being chosen or appointed to bear the office of churchwarden, overseer of the poor, or any other parochial or ward office, or other office, in any hundred of any shire, city, town, parish, division, or wapentake."

### *Of not making a Declaration against Popery.*

The offence of refusing to make a declaration against some of the principal doctrines of the popish religion puts all persons under the following restraints:—FIRST, From sitting in parliament. SECONDLY, From holding a place at court. THIRDLY, From living within ten miles of London. FOURTHLY, From keeping arms. FIFTHLY, It puts them under a disability of presenting to a church.

*Sect. 1.* As to the FIRST of the above-mentioned restraints, viz. that which relates to the sitting in parliament, it is enacted by 30 Car. 2. st. 2. c. 1. "That no peer shall vote or make his proxy in the House of Peers, or sit there during any debate; and that no member of the House of Commons shall vote or sit there during any debate after the speaker is chosen, until such peer or member shall take the oaths of allegiance and supremacy, and make a declaration of his belief that there is no transubstantiation in the sacrament of the Lord's Supper; and that the invocation or adoration of the Virgin Mary, or any other saint, and the sacrifice of the mass, as they are now used in the Church of Rome, are superstitious and idolatrous, &c., on pain that every such offender shall be adjudged a popish recusant convict, and disabled to hold or execute any office, &c., or from thenceforth to sit or vote in either house of parliament, to sue in law or equity, or to be guardian, executor, or administrator, or capable of any legacy or deed of gift, and shall forfeit for every wilful offence five hundred pounds."

Roman Catholics restrained from sitting in the House of Peers or in the House of Commons.

1 Geo. 1. c. 13.

*Sect. 2.* As to the SECOND of the above-mentioned restraints, viz. that which relates to the holding a place at court, it was enacted by the 30 Car. 2. st. 2. s. 9, 12, 13. "That every sworn servant to the king shall take the said oaths, and make the declaration in Chancery, the next Term after he shall be so sworn a servant, &c.; and that if any such person neglecting so to do, should advisedly come into or remain in the presence of the king or queen, or come into the court or house where they or any of them reside, he shall suffer all the penalties expressed in the foregoing section, unless such person so coming into the king's presence, shall first have license so to do." But this clause of the statute is repealed by 2 Geo. 2. c. 31. s. 9.

Roman Catholics restrained from holding a place at court.

*Sect. 3.* As to the THIRD of the above-mentioned restraints, viz. that which relates to the living within ten miles of London, it is enacted by 1 Will. and Mary, c. 9. "That every justice of peace in London and Westminster, and within ten miles thereof, shall cause to be arrested, and brought before him, all reputed papists (except foreigners, being merchants, or menial servants to some ambassador or public agent, and except all such as used some trade, mystery, or some manual occupation, "at

Reputed Catholics who shall refuse to take the oaths, and remain in London, or within ten miles thereof, shall suffer as popish recusant convicts, unless qualified as the statute 41 Geo. 3. c. 39. directs.



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"at the time of the said act, in London, &c., and also except  
 "all such persons as had their dwelling in London, &c. within  
 "six months before the thirteenth of February, 1688, and no  
 "dwelling elsewhere, and certified their names to the sessions  
 "before the first of August, 1689), and that every such justice  
 "shall tender the said declaration to every such person, and that  
 "every such person refusing the same, and afterwards remaining  
 "in London, &c., or within ten miles thereof, or being certified  
 "to the King's Bench or quarter-sessions, at the next term or  
 "sessions, as having refused to make the said declaration, and  
 "neglecting to make the same in such court, shall suffer as a  
 "popish recusant convict, &c."—But by 31 Geo. 3. c. 32. s. 19.  
 it is enacted, "shall not extend, or be deemed, taken, or con-  
 "strued to extend, to any person professing the Roman Catholic  
 "religion, who shall take and subscribe the oath of allegiance,  
 "abjuration, and declaration, therein appointed to be taken and  
 "subscribed."

No person sus-  
 pected of being  
 a Catholic, who,  
 on tender by  
 two justices,  
 shall refuse to  
 take the oaths,  
 &c., shall keep  
 any arms or am-  
 munition. But  
 no person shall  
 be prosecuted  
 for not obeying  
 such summons.

*Sect. 4.* As to the FOURTH of the above-mentioned restraints,  
*viz.* that which relates to the keeping arms, it is enacted by  
 1 Will. and Mary, c. 15. "That any two justices of the peace  
 "may and ought to tender the said declaration to any person  
 "whom they shall know, or suspect, or have information of, as  
 "being a papist, or suspected to be such; and that no such per-  
 "son so required, and not making and subscribing the said de-  
 "claration, or not appearing before the said justices upon notice  
 "to him given, or left at his usual abode, by one authorised by  
 "warrant under the hands and seals of the said justices, shall  
 "keep any arms or ammunition, or horse above the value of five  
 "pounds, in his own possession, or in the possession of any  
 "other person to his use (other than such necessary weapons as  
 "shall be allowed him by the quarter-sessions for the defence of  
 "his house or person); and that any two justices of peace, by  
 "warrant under their hands and seals, may authorise any person  
 "in the day-time, with the assistance of the constable or his de-  
 "puty, or the tithing-man, to search for all such arms, &c. and  
 "horses, and seize them to the king's use; and that the said jus-  
 "tices shall deliver the said arms and ammunition at the next  
 "quarter-sessions in open court; and that whoever shall conceal,  
 "&c., or shall be aiding to the concealing any such arms or  
 "horses, shall be committed to the common gaol, by warrant un-  
 "der the hands and seals of any two justices of peace, and also  
 "forfeit treble the value; and that those who discover any such  
 "arms or ammunition, so as the same may be seized, shall have  
 "the full value thereof, to be awarded to them by the sessions,  
 "&c., and that such refusers of the said declaration, &c. shall be  
 "discharged whenever they shall make the same." But by  
 31 Geo. 3. c. 32. s. 18. "No person shall be summoned to make  
 "the declaration, or be prosecuted for not obeying such sum-  
 "mons."

Papists are dis-  
 abled from pre-  
 senting to a church.

*Sect. 5. FIFTHLY,* As to the above-mentioned disability of  
 presenting to a church, it is enacted by 1 Will. and Mary, c. 26.  
 "That whoever shall refuse to make the said declaration upon  
 "such a tender thereof as is prescribed by the said act, shall be  
 "disabled

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"disabled to present to any benefice, &c." But it seems needless to set forth the clause of the said statute relating to this matter at large in this place, inasmuch as, by 12 Ann. c. 14. "All persons whatsoever making profession of the popish religion are under the like disability," as will appear from the following section.

By 4 Geo. 3. c. 2. s. 57. papists are made liable to pay double

land-tax, if they do not conform in the manner directed by the act.

### *Of promoting the Popish Religion.*

Offences in promoting or encouraging the popish religion seem to be reducible to the following heads: FIRST, Giving or receiving popish education: SECONDLY, Professing the popish religion: THIRDLY, Buying or selling popish books.

1 Comm. 431.  
4 Comm. 55.  
115.

#### I. Giving or receiving popish education.

*Sect. 1.* This depends upon several statutes. And first, it is enacted by 1 Jac. 1. c. 4. s. 6, 7. "That if any person or persons under the king's obedience shall go or send, or cause to be sent, any child, or any other person under their or any of their government, beyond the seas, out of the king's obedience, to the intent to enter into, or reside in, or repair to any college, &c. of any popish order, profession, or calling, to be instructed, persuaded, or strengthened in the popish religion, or in any sort to profess the same, every such person so sending such child, &c. shall forfeit £100, and every such person, so passing or being sent, &c. shall in respect of him or herself only, and not in respect of any of his heirs or posterity, be disabled to inherit, purchase, take, have or enjoy, any profits, hereditaments, chattels, debts, legacies, or sums of money, &c. whatsoever: and that all estates, terms, or other interests whatsoever to be made, suffered, or done, to the use or behoof of any such person, or upon any trust or confidence, immediately or immediately, to or for the benefit or relief of any such person, shall be utterly void."

Persons educating protestant children, or sending them abroad to be educated in the catholic faith, shall forfeit £100, and be disabled, &c. Andr. 104. Lucas, 113. 356. 406. 10 Mod. 113. Str. 319. Comyns, 207.

*Sect. 2.* And it is further enacted by 3 Jac. 1. c. 5. s. 16. "That if the children of any subject within the realm (the said children not being soldiers, mariners, merchants, or their apprentices or factors) shall be sent or go beyond sea, to prevent their good education in England, or for any other cause, without the license of the king or six of his privy council (whereof the principal secretary to be one), under their hands and seals, that then every such child shall take no benefit by any gift, conveyance, descent, devise, or otherwise, of or to any hereditament or chattel, till such child, being of the age of eighteen years or above, take the oath of obedience before some justice of peace of the county, liberty, or limit, where the parent of such child did and shall inhabit; and that in the meantime the next of kin to such child, who shall be no popish recusant, shall have the said hereditaments, &c. so given, &c. until such child shall conform, &c. and take the said oath, and receive the sacrament: and that after such conformity, &c. he who hath received the profits of the said hereditaments, &c. shall account for the same, and in reasonable time make payment thereof, and

The children of English subjects who shall go, or be sent abroad without license, shall be disabled until, being 18 years of age, they take the oaths, &c. Kcb. 263. Vide 3 Bac. Abr. 789. and the cases, &c. there cited.

Vide 11 & 12 Will. 3. c. 4. 18 Geo. 3. c. 60.

“and restore the value of the said goods, &c. And that who-  
“ever shall send such child over seas, shall forfeit one hundred  
“pounds.”

Persons who shall go them-  
selves, or send  
others abroad,  
to be trained up  
in any nursery  
or popish semi-  
nary, shall be  
disabled, and  
forfeit their  
estates real and  
personal;

*Sect. 3.* Also it is enacted by 3 Car. 1. c. 2. “That if any  
“person under the obedience of the king shall go, or shall con-  
“vey or send, or cause to be sent or conveyed, any person out  
“of the king’s dominions, into any parts beyond the seas, out of  
“the king’s obedience, to the intent to enter into, or be resident  
“or trained up in, any priory, abbey, nunnery, popish university,  
“college, or school, or house of jesuits, priests, or in a private  
“popish family, and shall be there by any popish person in-  
“structed, persuaded, or strengthened in the popish religion in  
“any sort to profess the same; or shall convey or send, or cause  
“to be conveyed or sent, any thing towards the maintenance of  
“any person so going or sent, and trained and instructed, as is  
“aforesaid, or under the colour of any charity towards the relief  
“of any priory, &c. or religious house whatsoever; every person  
“so sending, &c. any such person or thing, and every person  
“passing or sent, being thereof convicted, &c. shall be disabled  
“to prosecute any suit in law or equity, or to be executor or  
“administrator to any person, and be incapable of any legacy or  
“deed of gift, or to bear any office within the realm; and shall  
“forfeit all his goods and chattels, with all his hereditaments,  
“offices, and estates of freehold, during his life.”

unless such per-  
son shall be  
qualified as the  
31 Geo. 3. c. 32.  
directs.

But by the 31 Geo. 3. c. 32. s. 4. “No person who shall  
“take and subscribe the oath before-mentioned shall be pre-  
“sented, indicted, sued, impeached, prosecuted, or convicted for  
“being a papist, or reputed papist, or for professing or being  
“educated in the popish religion, or for entering into, or belong-  
“ing to any ecclesiastical order or community of the church of  
“Rome, or for maintaining or assisting others therein.”

II. Professing the popish religion is punished with the fol-  
lowing disabilities: *FIRST*, Of taking an estate in lands: *SE-*  
*CONDLY*, Of presenting to a church.—And with the following  
restraints: *FIRST*, From keeping school: *SECONDLY*, From  
withholding a competent maintenance from a protestant child.

No person pro-  
fessing the Ro-  
man Catholic  
religion shall  
take any estate  
in lands, by de-  
scent, devise,  
&c. *Sed vide*  
*infra*.

1 Atk. 526.

537.

2 Atk. 65. 155.

210.

3 Atk. 155. 457.

8 Mod. 167.

2 P. Will. 5.

155. 364.

10 Mod. 29.

230.

Strang. 4096.

*Sect. 4.* As to the *FIRST* of the above-mentioned disabilities,  
*viz.* that of taking an estate in lands, it is enacted by 11 and 12  
W. 3. c. 4. “That every person, educated in, or professing the  
“popish religion, who shall not, within six months after the age  
“of eighteen years, take the oath of allegiance and supremacy,  
“and subscribe the declaration against popery mentioned in  
“30 Car. 2. stat. 2. chap. 1. in the Chancery, or King’s Bench,  
“or quarter-sessions of the county where such person shall  
“reside, shall in respect of himself or herself only, and not in  
“respect of any of his or her heirs or posterity, be disabled to  
“inherit or take by descent, devise, or limitation, in possession,  
“reversion, or remainder, any lands, tenements, or hereditaments,  
“in England or Wales, &c. And during the life of such person,  
“and until he take the said oaths, &c. his next of kin, being a  
“protestant, shall enjoy the same, without being accountable for  
“the profits, but shall not do wilful waste under the pain of for-  
“feiting

"feiting treble damages to the party so disabled: and all papists, or persons making profession of the popish religion, are disabled to purchase in their own names, or the names of others, to their use or in trust for them: and all estates, terms, and other interest and profits whatsoever, out of lands made to their use, or on any trust, mediately or immediately, for their benefit, are void."

1 P. Will. 353.  
Covp. 468.  
1 Wills. 176.

Sect. 5. In the construction hereof it was resolved by the House of Lords, in Roper's case, That the devise of the residue of money arising from the sale of an estate appointed to be sold for payment of debts, &c. is within the statute.

9 Mod. 179.  
181.—But a papist tenant in tail who suffers a recovery to

himself in fee, in order to make a marriage settlement, is not a purchaser within the act. Str. 267.

† But by 18 Geo. 3. c. 60. the above clause in the statute of William the Third is repealed. and all persons having or claiming any lands, tenements, or hereditaments under titles not hitherto litigated, shall enjoy the same as if the said act of 11 and 12 Will. 3. c. 4. had not been made, provided always, "That all such persons, within the space of six calendar months after the passing of this act, or of the accruing of his, her, or their title, being of the age of twenty-one years; or within six months after he or she shall attain the age of twenty-one years, or being of unsound mind, or in prison, or beyond the seas, then within six months after such disability removed, shall take and subscribe the oath in the words as recited in the statute."—Which oath the courts of record and chancery at Westminster, in Wales, Chester, Lancaster, Durham, or any general or quarter-sessions of the peace, of any county or place in England are required to administer and to register.

Except the persons so professing the Catholic religion shall qualify under the 18 Geo. 3. c. 60.

Sect. 6. As to the SECOND of the above-mentioned disabilities, viz. that of presenting to a church; by 3 Jac. 1. 5. s. 18, 19, 20, 21. and 1 Will. and Mary, c. 26. this disability extended only to popish recusants convict, and persons refusing to make the declaration against popery mentioned in 30 Car. 2. st. 2.

Papists cannot present to a church.

But it is enacted by 12 Anne, st. 2. c. 14. "That every papist, or person making profession of the popish religion, &c. and every mortgagee, trustee, or person any ways intrusted by or for such papist, &c. with or without writing, shall be disabled to present to any benefice, school, or hospital, &c. or to grant any avoidance of any benefice, prebend, or ecclesiastical living; and that in all cases the universities shall present."

Mortgagees or trustees of papists disabled from presenting to a church;

Sect. 7. Also by force of the said statute, "The ordinary may tender the declaration against transubstantiation to any reputed priest making a presentation, and upon a refusal to take the same, the presentation shall be void: also the ordinary may examine every presentee upon oath, whether the person who presented him be the true patron; or only a trustee? And the court wherein a *quare impedit* shall be brought, may in like manner examine the parties, and a bill may be brought in any court of equity to discover such secret trusts, &c. and the answer of such persons upon any such examination or bill shall

and the ordinary may examine the person presenting to discover secret trusts.

Precedent of a title made under these statutes. Lut. 1101. 1117. Conyns, 182. Gibson, 771. 3 Lev. 533.

"be good evidence against such patron in respect of such a presentation, but not as to any other purpose."

And every grant of any advowson by any papist shall be void.  
1 Geo. 1. st. 2. ch. 55.  
3 Geo. 1. c. 18.

† And it is also enacted by 11 Geo. 2. c. 17. s. 5. "That every grant of any advowson, or right of presentation, collation, nomination, or donation of and to any benefice, prebend, or ecclesiastical living, school, hospital, or donative, and every grant or any avoidance thereof by any papist, or person making profession of the popish religion, or any mortgagee, trustee, or person any ways intrusted directly or indirectly, mediately or immediately, by or for any such papist, whether declared by writing or not, shall be null and void, unless such grant shall be made *bona fide*, and for a full and valuable consideration to and for, and merely and only for the benefit of a protestant purchaser, and every such grantee shall be deemed a trustee, &c. and compelled to discover, &c. according to 12 Anne.— And that every devise thereof, with intent to secure the benefit to the heirs or family of such papist, shall be null and void, and the devisee bound to discover as aforesaid."

Sect. 8. I do not know that any resolution hath been given on either of the above-mentioned statutes of 1 Will. and Mary, c. 26. or 12 Ann. c. 14. However the expositions which were made on 3 Jac. 1. seeming to be for the most part applicable to these latter statutes also, I shall take notice of the principal of them; as,

11 Co. 57, 58.  
Comyns, 182.

Sect. 9. *First*, That where a presentment is *pro hac vice* vested in the university by reason of the patron's being a popish recusant at the time when the church became void, it shall not be divested again by his conforming himself to the church, or by his death.

Cawley, 230.

Sect. 10. *Secondly*, That such a patron is only disabled to present, and that he continues patron as to all other purposes, and therefore that he shall confirm the leases of the incumbent, &c.

1 Jones, 19.

Sect. 11. *Thirdly*, That such a person, by being disabled to grant an avoidance, is no way hindered from granting the advowson itself in fee, or for life or years, *bona fide*, and for good consideration.

1 Jones, 20.  
Hob. 126, 127.  
Moor, 372.

Sect. 12. *Fourthly*, That if an advowson or avoidance belonging to such a person come into the king's hands, by reason of an outlawry, or conviction of recusancy, &c. the king, and not the university, shall present.

Papists convicted of keeping school shall suffer perpetual imprisonment,

Sect. 13. As to the FIRST of the above-mentioned restraints, *viz.* that which relates to the keeping school, it is enacted by the said statute of 11 and 12 Will. 3. c. 4. s. 3. "That if any papist, or person making profession of the popish religion, shall be convicted of keeping school, or taking upon themselves the education or government, or boarding of youth, in any place within this realm, or the dominions thereunto belonging, they shall be adjudged to perpetual imprisonment."

unless qualified under 18 Geo. 3. c. 60.

† Sect. 14. But this clause is repealed by 18 Geo. 3. c. 60, provided the party shall take and subscribe the oath, therein recited, before he shall have been apprehended, or any prosecution commenced against him.

† Sect.

† Sect. 15. And by 31 Geo. 3. c. 32. s. 13. it is further enacted, "That no ecclesiastic, or other person professing the Roman Catholic religion, who shall take and subscribe the oath of allegiance, abjuration, and declaration, therein mentioned, shall be prosecuted in any court whatsoever, for teaching and instructing youth as a tutor or schoolmaster, any law or statute to the contrary notwithstanding."

or under the 31 Geo. 3. c. 32.

† Sect. 16. By 31 Geo. 3. c. 32. s. 14. "Provided always, That no person professing the Roman Catholic religion shall obtain or hold the mastership of any college or school of royal foundation, or of any other endowed college or school for the education of youth, or shall keep a school in either of the Universities of Oxford and Cambridge."

But no Roman Catholic shall hold the mastership of any college or school of royal foundation, &c.

† Sect. 17. By 31 Geo. 3. c. 32. s. 15. "Provided also, That no school-master professing the Roman Catholic religion shall receive into his school, for education, the child of any Protestant father."

or educate any child of a Protestant father;

† Sect. 18. By 31 Geo. 3. c. 32. s. 16. "Provided also, That no person professing the Roman Catholic religion shall be permitted to keep a school for the education of youth, until his or her name and description as a Roman Catholic school-master or school-mistress shall have been recorded at the quarter or general sessions of the peace for the county or other division or place where such school shall be situated, by the clerk of the peace of the said court, who is hereby required to record such name and description accordingly, upon demand by such person, and to give a certificate thereof to such person, as shall at any time demand the same; and no person offending in the premises shall receive any benefit of this act."

nor keep a school until his name, &c. shall have been recorded by the clerk of the peace;

† Sect. 19. By 31 Geo. 3. c. 32. s. 17. "Provided also, That nothing in this act contained shall make it lawful to found, endow, or establish any religious orders or society of persons bound by monastic or religious vows, or to found, endow, or establish any school, academy, or college, by persons professing the Roman Catholic religion, within these realms, or the dominions thereunto belonging; and that all uses, trusts, and dispositions, whether of real or personal property, deemed to be superstitious or unlawful, shall continue to be so deemed and taken."

and no religious order, &c. to be founded by Roman Catholics, &c.

Sect. 20. As to the SECOND of the abovementioned restraints, viz. that which relates to the power of a Popish parent over his Protestant child, it is enacted by the said statute of 11 and 12 Will. 3. c. 4. "That if any Popish parent, in order to compel a Protestant child to a change of religion, shall refuse to allow such child a sufficient maintenance, suitable to the degree and ability of such parent, and to the age and education of such child, the lord chancellor upon complaint may make such order therein as shall be agreeable to the intent of the said act."

The chancellor may order provision for the Protestant child of a Popish parent.

## III. Selling or buying Popish books.

Catholic books shall not be imported into England.

4 Comm. 115.  
See 3 & 4 Edw.  
6. c. 10.

13 Eliz. c. 2.

*Sect. 21.* This depends upon 3 Jac. 1. c. 5. s. 25. by which it is enacted, "That no person shall bring from beyond the seas, nor shall print, buy, or sell any Popish primer, ladies psalters, manuals, rosaries, Popish catechisms, missals, breviaries, portals, legends and lives of saints containing superstitious matter, printed or written in any language whatsoever, nor any other superstitious books printed or written in the English tongue, on pain of forfeiting forty shillings for every book, &c. and the books to be burnt."

*Of Protestant Dissenters.*

Obstinate non-conformists were formerly compellable by the statute 31 Eliz. c. 1. to abjure the realm; and were also subject to all the penalties inflicted by the statutes of 1 Eliz. c. 2. the 23 Eliz. c. 1. and 3 Jac. 1. c. 4. for neglecting divine worship according to the rites of the national church. Dissenters also were restrained by the statutes 29 Eliz. c. 6. 35 Eliz. c. 1. the 17 Car. 2. c. 2. the 22 Car. 2. c. 1. and 3 Jac. 1. c. 5.

The penal statutes against Papists and Dissenters except 23 Car. 2. c. 2. and 30. Car. 2. st. 2. c. 1. shall not be put in force against any Protestant Dissenter who shall take the oaths and declaration mentioned in the Toleration Act, &c.

+ *Sect. 1.* But by the Toleration Act, 1 Will. and Mary, c. 18. reciting, "That as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their Majesties Protestant subjects in interest and affection, it is enacted, That neither the statutes of the 23 Eliz. c. 1. nor the 29 Eliz. c. 6. nor the 3 Jac. 1. c. 4. nor the 3 Jac. 1. c. 5. nor any other law or statute of this realm made against Papists or Popish recusants, except the statute 25 Car. 2. c. 2. and the 30 Car. 2. st. 2. c. 1. shall be construed to extend to any person or persons dissenting from the church of England, that shall take the oaths mentioned in the statute 1 Will. and Mary, c. 1, and make and subscribe the declaration mentioned in the statute 30 Car. 2. st. 2.; which oaths and declaration the justices of peace, at the general sessions of the peace to be held for the county or place where such person shall live, are hereby required to tender and administer to such persons as shall offer themselves to take, make, and subscribe the same, and thereof to keep a register: and no persons aforesaid shall pay a fee to any officer belonging to the court above the sum of sixpence, nor that more than once, for entry of taking the oaths, and making and subscribing the declaration; nor above the further sum of sixpence for any certificate of the same to be made out and signed by the officer or officers of the said court."

Protestant Dissenters who shall take the oaths, though after conviction, shall be discharged.

+ *Sect. 2.* By 1 Will. and Mary, c. 18. s. 3. "Every person convicted or prosecuted of recusancy by indictment, information, action of debt, or otherwise upon the said statutes, or any of them, that shall take the said oaths, and make and subscribe the declaration in the court of exchequer, or assizes, or general

" general or quarter sessions for the county where such person lives, and to be thence respectively certified into the exchequer, shall be thenceforth exempted and discharged from all the penalties, seizures, forfeitures judgments, and executions incurred by force of any of the said statutes, without any composition, fee, or further charge whatsoever."

† Sect. 3. By 1 Will. and Mary, c. 18. s. 4. " Every person that shall take the said oaths, and make and subscribe the declaration, shall not be liable to any pains, penalties, or forfeitures mentioned in 35 Eliz. c. 1. nor 22 Car. 2. c. 1. Nor shall any of the said persons be prosecuted in any ecclesiastical court, for or by reason of their nonconforming to the Church of England."

Protestants Dissenters exempted from the penalties of attending conventicles.

† Sect. 4. But by 1 Will. and Mary, c. 18. s. 5, it is provided, " That if any assembly of persons dissenting from the Church of England shall be had in any place for religious worship with the doors locked, barred, or bolted, during any time of such meeting together, all and every person or persons that shall come to, and be at such meeting, shall not receive any benefit from this law, but be liable to all the pains and penalties of all the aforesaid laws recited in this act for such their meeting, notwithstanding his taking the oaths, and making and subscribing the declaration aforesaid."

But the meeting-houses shall be open during service.

† Sect. 5. But by 1 Will. and Mary, c. 18. s. 6. " Nothing herein contained shall exempt any of the persons aforesaid from paying of tithes or other parochial duties, or any other duties to the church or minister, nor from any prosecution in any ecclesiastical court or elsewhere for the same."

Dissenters shall pay tithes, and other parochial dues.

† Sect. 6. By 1 Will. and Mary, c. 18. s. 7. " If any person dissenting from the Church of England as aforesaid shall hereafter be chosen, or otherwise appointed to bear the office of high constable or petty constable, churchwarden, overseer of the poor, or any other parochial or ward office, and such person shall scruple to take upon him any of the said offices in regard of the oaths, or any other matter or thing required by the law to be taken or done in respect of such office, every such person shall and may execute such office or employment by a sufficient deputy, by him to be provided, that shall comply with the laws on this behalf. Provided the said deputy be allowed and approved by such person or persons in such manner as such officer or officers respectively should by law have been allowed and approved."

If any Protestant Dissenter shall be chosen to any parish or ward office, and shall scruple to take the oaths, he may serve by deputy.

† Sect. 7. By 1 Will. and Mary, c. 18. s. 8. " No person dissenting from the Church of England in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation of dissenting Protestants, that shall make and subscribe the declaration aforesaid, and take the said oaths at the general or quarter sessions of the peace to be held for the county, town, part or division where such person lives, which court is hereby empowered to administer

Protestant Dissenting Ministers who shall make and subscribe the declaration and take the oaths and approve of the Thirty-five Articles, shall not be liable to any



of the pains and penalties inflicted by the 17 Car. 2. c. 2. and the 13 & 14 Car. 2. c.

“administer the same, and shall also declare his approbation of, and subscribe the Articles of Religion mentioned in the 13 Eliz. c. 2. except the Thirty-fourth, Thirty-fifth, and Thirty-sixth, and these words of the Twentieth Article, viz. ‘The Church hath power to decree rites or ceremonies, and authority in controversies of faith,’ shall be liable to any of the pains or penalties mentioned in an act made in the 17 Car. 2. c. 2. nor the 22 Car. 2. c. 1. for or by reason of such persons preaching at any meeting for the exercise of religion; nor to the penalty of one hundred pounds mentioned in 13 and 14 Car. 2. c. 2. for officiating in any congregation for the exercise of religion permitted and allowed by this act.”

The taking the oaths and subscribing the declaration and approving the Articles to be registered at the quarter sessions.

† Sect. 8. But by 1 Will. and Mary, c. 18. s. 9. it is provided, “That the making and subscribing the said declaration, and the taking the said oaths, and making the declaration of approbation and subscription to the said Articles, in manner as aforesaid, by every respective person or persons hereinbefore-mentioned, at such general or quarter sessions of the peace as aforesaid, shall be then and there entered of record in the said court, for which sixpence shall be paid to the clerk of the peace, and no more. Provided that such person shall not at any time preach in any place but with the doors not locked, barred, or bolted, as aforesaid.”

Anabaptists exempted from the penalties of the statutes.

† Sect. 9. By 1 Will. and Mary, c. 18. s. 10. “And as some dissenting Protestants scruple the baptizing of infants, it is enacted, That every person in pretended holy orders, or pretending to holy orders, or preacher, or teacher, that shall subscribe the aforesaid Articles of Religion, except before accepted, and also except part of the Seven-and twentieth Article touching Infant Baptism, and shall take the said oaths, and make and subscribe the declaration aforesaid, in manner aforesaid, every such person shall enjoy all the privileges, benefits, and advantages which any other dissenting minister, as aforesaid, might have or enjoy by virtue of this act.”

Protestant Dissenting Ministers exempted from serving on juries and from parochial and ward offices.

† Sect. 10. By 1 Will. and Mary, c. 18. s. 11. “Every teacher or preacher in holy orders, or pretended holy orders, that is a minister, preacher or teacher of a congregation, that shall take the oaths herein required, and make and subscribe the declaration aforesaid, and also subscribe such of the aforesaid Articles of the Church of England as are required by this act in manner aforesaid, shall be thenceforth exempted from serving upon any jury, or from being chosen or appointed to bear the office of churchwarden, overseer of the poor, or any other parochial or ward office, or other office in any hundred of any shire, city, town, parish, division, or wapentake (a).”

(a) By 2 Geo. 3. c. 20. they are also exempted from serving in the militia.

A justice of the peace may require any person who goes to a dissenting meeting-house, to take the oaths and make the declaration.

† Sect. 11. By 1 Will. and Mary, c. 18. s. 12. “Every justice of the peace may require any person that goes to any meeting for exercise of religion, to make and subscribe the declaration aforesaid, and also to take the oaths or declaration of fidelity hereinafter-mentioned, in case such person scruples the taking of an oath; and upon refusal thereof, such justice of the peace

## Ch. 26. OFFENCES AGAINST RELIGION.

“ is hereby required to commit such person to prison without bail or mainprise, and to certify the name of such person to the next general or quarter-sessions of the peace to be held for that county, city, town, part or division where such person then resides ; and if such person so committed shall, upon a second tender at the general or quarter sessions, refuse to make and subscribe the declaration aforesaid, such person refusing shall be then and there recorded, and he shall be taken thenceforth, to all intents and purposes, for a Popish recusant convict, and suffer accordingly, and incur all the penalties and forfeitures of all the aforesaid laws.”

† Sect. 12. By 1 Will. and Mary, c. 18. s. 13. “ And as there are certain other persons, dissenters from the Church of England, who scruple the taking any oath (1), it is enacted, that every such person shall make and subscribe the aforesaid declaration, and also this declaration of fidelity :

Quakers exempted.

† Sect. 13. “ ‘ I, A. B. do sincerely promise and solemnly declare before God and the world, that I will be true and faithful to his Majesty King George the Third ; and I do solemnly profess and declare, that I do from my heart abhor, detest, and renounce as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the Pope, or any authority of the See of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any power, jurisdiction, superiority, preeminence or authority ecclesiastical or spiritual within this realm (a).’ ”

Declaration of fidelity.  
See 2 Burr. 1002.

(a) See post. sect. 23. another form of declaration appointed.

“ And shall subscribe a profession of their Christian belief in these words :

† Sect. 14. “ ‘ I, A. B. profess faith in God the Father, and in Jesus Christ his eternal son, the true God, and in the Holy Spirit, one God blessed for evermore ; and do acknowledge the holy Scriptures of the Old and New Testament to be given by divine inspiration (b).’ ”

Profession of their Christian faith.

(b) See post. sect. 23.

“ Which declaration and subscription shall be made and entered of record at the general quarter sessions of the peace for the county, city, or place where every such person shall then reside. And every such person that shall make and subscribe the two declarations and professions aforesaid, being thereunto required, shall be exempted from all the pains and penalties of all and every the aforementioned statutes made against Popish recusants, or Protestant nonconformists, and also from the penalties of 5 Eliz. c. 1. for or by reason of such persons not taking or refusing to take the oath mentioned in the said act ; and also from the penalties of 13 and 14 Car. 2. c. 4. and enjoy all the other benefits, privileges, and advantages, under the like limitations, provisoes, and conditions, which any

(1) See 7 & 8 Will. 3. c. 34. and the case of *Acheson v. Everet*, Cowper, 387. and 2 Burn, E. L. 18. for cases in which a Quaker may make affirmation. See also 8 Geo. 1. c. 6.

“any other Dissenters shall or ought to enjoy by virtue of this act.”

If any person shall refuse to take the oaths when tendered by a justice of the peace, or at the sessions, such persons shall not be admitted to make the two declarations aforesaid, without proving himself to be a Protestant Dissenter.

† *Sect. 15.* By 1 Will. and Mary, c. 18. s. 15. it is provided, “That in case any person shall refuse to take the said oaths, when tendered to them, which every justice of the peace is hereby empowered to do, such person shall not be admitted to make and subscribe the two declarations aforesaid, though required thereunto, either before any justice of the peace, or at the general or quarter sessions, before or after any conviction of Popish recusancy, as aforesaid, unless such person can, within thirty-one days after such tender of the declarations to him, produce two sufficient Protestant witnesses to testify upon oath that they believe him to be a Protestant Dissenter, or a certificate under the hands of four Protestants who are conformable to the Church of England, or have taken the oaths and subscribed the declaration above-mentioned, and shall also produce a certificate under the hands and seals of six or more sufficient men of the congregation to which he belongs, owning him for one of them.”

The proof to be under the hands of six of his congregation, &c.

† *Sect. 16.* By 1 Will. and Mary, c. 18. s. 15. “Until such certificate under the hands of six of his congregation, as aforesaid, be produced, and two Protestant witnesses come to attest his being a Protestant Dissenter, or a certificate under the hands of four Protestants, as aforesaid, be produced, the justice of the peace shall, and hereby is required to take a recognizance with two sureties in the penal sum of fifty pounds, to be levied of his goods and chattels, lands and tenements, to the use of the king and queen, their heirs and successors, for his producing the same; and if he cannot give such security, to commit him to prison, there to remain until he has produced such certificates, or two witnesses, as aforesaid.”

The Lord's day still to be observed.

† *Sect. 17.* By 1 Will. and Mary, c. 18. s. 16. “All the laws made and provided for the frequenting of divine service on the Lord's day, commonly called Sunday, shall be still in force and executed against all persons that offend against the said laws, except such persons come to some congregation or assembly of religious worship allowed or permitted by this act.”

No Papist shall have any benefit by this act. Repealed as to the Trinity, by st. 53 Geo. 5. c. 160.

† *Sect. 18.* By 1 Will. and Mary, c. 18. s. 17. “This act shall not extend to give any ease, benefit, or advantage to any Papist or Popish recusant whatsoever; or any person that shall deny in his preaching or writing the doctrine of the Blessed Trinity, as it is declared in the aforesaid Articles of Religion.”

Persons disturbing Protestant dissenters in any meeting-house, or misusing any Protestant dissenting minister, shall forfeit fifty pounds.

† *Sect. 19.* By 1 Will. and Mary, c. 18. s. 18. “If any person or persons shall, willingly and of purpose, maliciously or contemptuously come into any cathedral, or parish church, chapel, or other congregation permitted by this act, and disquiet or disturb the same, or misuse any preacher or teacher, such person or persons, upon proof thereof before any justice of peace, by two or more sufficient witnesses, shall find two sureties to be bound

“ bound by recognizance in the penal sum of fifty pounds, and in  
 “ default of such sureties, shall be committed to prison, there to  
 “ remain till the next general or quarter sessions; and upon con-  
 “ viction of the said offence at the said general or quarter ses-  
 “ sions, shall suffer the pain and penalty of twenty pounds, to the  
 “ use of the king and queen, their heirs and successors. (a)

(a) See post, sect. 31. where this offence, when riotously committed, is made felony.

† Sect. 20. By 1 Will. and Mary, c. 18. s. 19. “ No congrega-  
 “ tion or assembly for religious worship shall be permitted or  
 “ allowed by this act, until the place of such meeting shall be cer-  
 “ tified to the bishop of the diocese, or to the archdeacon of that  
 “ archdeaconry, or to the justices of the peace at the general or  
 “ quarter sessions of the peace for the county, city, or place in  
 “ which such meeting shall be held, and registered in the said  
 “ bishop’s or archdeacon’s court respectively, or recorded at the  
 “ said general or quarter sessions; the register or clerk of the  
 “ peace whereof respectively is hereby required to register the  
 “ same, and to give certificate thereof to such person as shall de-  
 “ mand the same, for which there shall be none greater fee nor  
 “ reward taken than the sum of six-pence.

But such meet-  
 ing-house must  
 be certified to  
 the bishop of  
 the diocese, or  
 to the quarter-  
 sessions, and  
 there respect-  
 ively register-  
 ed.

† Sect. 21. By 10 Ann. c. 2. s. 8. “ If any person dissenting  
 “ from the Church of England, (not in holy orders, or pretended  
 “ holy orders, or pretending to holy orders, nor any preacher or  
 “ teacher of any congregation,) who should have been entitled to  
 “ the benefit of the Toleration Act, if such person had duly  
 “ taken, made, and subscribed the oaths and declaration, or  
 “ otherwise qualified him or herself as required by the said act,  
 “ shall be prosecuted upon, or by virtue of, any of the penal sta-  
 “ tutes from which Protestant Dissenters are exempted by the  
 “ said act, shall at any time during such prosecution take, make,  
 “ and subscribe the said oaths and declarations, or, being of the  
 “ people called Quakers, shall make and subscribe the aforesaid  
 “ declaration, and also the declaration of fidelity, and subscribe  
 “ the profession of their Christian belief according to the said  
 “ act, or before any two justices of the peace, such person shall  
 “ be intitled to the benefit of the said act as fully and effectually  
 “ as if such person had duly qualified himself within the time  
 “ prescribed by the said act, and shall be thenceforth exempted  
 “ and discharged from all the penalties and forfeitures incurred  
 “ by force of any of the aforesaid penal statutes.”

Protestant dis-  
 senters not in  
 holy orders, or  
 pretended holy  
 orders, who  
 shall, during  
 any prosecu-  
 tion, qualify ac-  
 cording to the  
 Toleration Act,  
 shall be dis-  
 charged from all  
 penalties.

† Sect. 22. By 10 Ann. c. 3. s. 9. “ Any preacher, or teacher  
 “ of any congregation of dissenting Protestants, duly, in all re-  
 “ spects, qualified according to the Toleration Act, shall be  
 “ allowed to officiate in any congregation, although the same be  
 “ not in the county wherein he was so qualified, provided that the  
 “ said congregation, or place of meeting, has been, before such  
 “ officiating, duly certified and registered, or recorded, according  
 “ to the said act: and such preacher or teacher shall, if required,  
 “ produce a certificate of his having so qualified himself, under  
 “ the hand of the clerk of the peace for the county or place where  
 “ he so qualified himself; and shall also, before any justice of the  
 “ peace of such county or place where he shall so officiate, make  
 “ and subscribe such declaration, and take such oaths, as are  
 “ mentioned in the said act, if thereunto required.”

Dissenting  
 preachers duly  
 qualified may  
 officiate in any  
 dissenting con-  
 gregation in any  
 county, on pro-  
 ducing a certifi-  
 cate, and taking  
 the oath, if re-  
 quired.

See the case of  
 Reg. v. Peach,  
 2 Salk. 572.

† Sect.

Dissenting preachers who shall scruple to make and subscribe the declaration, &c. required by 13 Eliz. c. 12. shall be duly qualified on making and subscribing the declaration 1 Will. and Mary, c. 18. and the 19 Geo. 3. c. 44.

† *Sect. 23.* By 19 Geo. 3. c. 44. which declares the 1 Will. and Mary, c. 18. to be a *public act*, “ Every person dissenting from the Church of England, in holy orders, or pretended holy orders, or pretending to holy orders, being a preacher or teacher of any congregation of dissenting Protestants, who, if he scruple to declare and subscribe as required by 13 Eliz. c. 12. shall take the oaths, and make and subscribe the declaration against popery, required by the said act of 1 Will. and Mary to be taken, made, and subscribed by Protestant dissenting ministers, and shall also make and subscribe a declaration in the words following:—‘ I A. B. do solemnly declare, in the presence of Almighty God, that I am a Christian and a Protestant, and as such that I believe that the scriptures of the Old and New Testament, as commonly received among Protestant churches, do contain the revealed will of God; and that I do receive the same as the rule of my doctrine and practice,’—shall be, and every such person is hereby declared to be, entitled to all the exemptions, benefits, privileges, and advantages of 1 Will. and Mary, c. 18. and 10 Ann. c. 2; and the justices of the peace at the general sessions of the peace where any Protestant dissenting minister shall live, are required to administer the last mentioned declaration to such minister, upon his offering himself to make and subscribe the same.”

Protestant dissenters shall not be prosecuted.

*Sect. 24.* By 19 Geo. 3. c. 44. s. 2. “ No Protestant dissenter, so qualified, shall be prosecuted for teaching and instructing youth, as a tutor or schoolmaster, in any case whatsoever.”

*Sect. 25.* But by 19 Geo. 3. c. 44. s. 3. it is provided, “ That this qualification shall not entitle such dissenters to obtain or hold the mastership of any college or school of royal foundation, or of any other endowed college or school for the education of youth, unless founded since 1 Will. and Mary, for the immediate use and benefit of Protestant dissenters.”

Upon these statutes the following determinations have been made.

Hutchinson and his wife v. Brookshank, 3 Lev. 376. See also Gibson's Codex, 519.

† *Sect. 26.* That if a man and woman, being dissenters, and having qualified themselves pursuant to the Toleration Act, be married in the face of their congregation, properly licensed, in the presence of witnesses, according to the statute, and after banns published according to the discipline of the said congregation, and be afterwards libelled against in the ecclesiastical court for incontinence and fornication, the courts of common law will grant a prohibition. (a)

(a) But by the marriage act, all marriages not celebrated in a church or public chapel, except the parties be Quakers or Jews, are declared void.

Trebee v. Kitch, 2 Atk. 493.

† *Sect. 27.* That these statutes, being made to protect persons of tender consciences from penalties, do not extend to exempt clergymen of the Church of England from the consequences of acting contrary to the rules and discipline of the church; as for officiating in a chapel of ease without a license from the bishop.

2 Burn's E. L. 179.

† *Sect. 28.* That the Toleration Act does not extend to all persons whatsoever who shall think fit to style themselves Protestant

testant Dissenters, but in order to be entitled to the benefits of it, they must first qualify as is therein directed; and therefore it was said by Holt, chief justice, (a) that if a man be a professed churchman, and his conscience will permit him sometimes to go to meetings, instead of coming to church, the Toleration Act shall not excuse him, for it was not made for such sort of people.

(a) In *Britton v. Standish*, 6 Mod. 190.

† Sect. 29. That a devise of an annuity to the minister of a baptist meeting-house is a good charitable use, and that the court of Chancery will enforce its execution.

Attorney-Gen. *v.* Cock, 2 Vesey, 273.

† Sect. 30. That if a house be granted to a dissenting minister and others in trust, to suffer the said meeting-house to be for the public worship of God by such congregation of Protestant dissenters, commonly called Presbyterians, as shall attend the said minister, or his successors, regularly and fairly chosen and appointed to be the minister in the said meeting, the court will grant a *mandamus* to the trustees to admit a minister regularly elected, or to restore one improperly displaced; but in order to obtain a *mandamus* to be restored, it is necessary for the dissenting minister to shew a *prima facie* title to the office.

*Rex v. Bonner*, 2 Burr. 1265.

† Sect. 31. That if a certain tenement be certified to the quarter-sessions as a place set apart for the meeting of Protestant dissenters, the court will grant a *mandamus* to the justices to register such place pursuant to the Toleration Act; for in such case the justices are merely ministerial.

*Rex v. Jotham*, 3 Term Rep. 275.

*Rex v. Justices of Derbyshire*, 1 Black. Rep. 606.  
2 Burr. 1043.  
Id. Ray. 125.

† Sect. 32. That the court of King's Bench also will grant an information for disturbing a congregation assembled for the purpose of divine worship in any meeting registered pursuant to the Toleration Act.

Gibson, 304.

† Sect. 33. And by the statute 1 Geo. 1. st. 2. c. 5. "If any persons unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, shall unlawfully, and with force, demolish and pull down, or begin to demolish and pull down, any church or chapel, or any building for religious worship certified and registered according to the Toleration Act, every such demolishing or pulling down, or beginning to demolish or pull down, shall be felony without clergy;"—and the hundred is made liable to pay the damage thereby done.

See post, tit. "Riot."

By statute of 53 Geo. 3. c. 160. sect. 1. which is an act made in favour of Unitarian dissenters, it is enacted, "That so much of an act passed in the 1st of W. & M. entitled 'An act for exempting his majesty's Protestant subjects dissenting from the Church of England from the penalties of certain laws' as provides that that act, or any thing therein contained, should not extend, or be construed to extend, to give any ease, benefit, or advantage to persons denying the Trinity as therein mentioned, &c. be, and the same is thereby repealed."

Penalties for "denying the Trinity" repealed by st. 53 Geo. 3. c. 160.

By sect. 2. of the same act, the act of 9 and 10 of K. W. entitled "An act for the more effectual suppressing blasphemy and profaneness," so far as the same relates to persons denying as therein respecting the Holy Trinity, is also repealed.

## CHAP. XXVII.

OF OFFENCES AGAINST THE PUBLIC JUSTICE  
OF THE KINGDOM.

**OFFENCES** against the public justice of the kingdom, are,

1. Such as are committed by officers.
2. Such as are committed by common persons, without any relation to an office.

**OFFENCES BY OFFICERS** seem reducible to the following heads:

**FIRST**, Neglect, or breach of duty.

**SECONDLY**, Bribery.

**THIRDLY**, Extortion.

As to the first of these offences, *viz.* Neglect, or breach of duty.

Co. Lit. 233,  
234.  
Vide the case of  
the King v.  
Bambridge,  
Mich. Term,  
23 Geo. 3. on an  
information for  
misfeasance as  
accountant at  
the pay-office,  
Whitchall.

*Sect. 1.* I take it to be agreed, that in the grant of every office whatsoever, there is this condition implied by common reason, that the grantee ought to execute it diligently and faithfully; for since every office is instituted, not for the sake of the officer, but for the good of some other, nothing can be more just than that he who either neglects or refuses to answer the end for which his office was ordained, should give way to others, who are both able and willing to take care of it. And therefore it is certain, that an officer is liable to a forfeiture of his office, not only for doing a thing directly contrary to the design of it, but also for neglecting to attend his duty at all usual, proper, and convenient times and places, whereby any damage shall accrue to those by, or for, whom he was made an officer.

9 Co. 50.  
Co. Lit. 233.  
2 Roll. 152.  
1. 30.  
2 And. 119.  
Hard. 150.  
Modern, 193.  
1 Sid. 81.  
C. Car. 491.  
(a) 39 H. 6. 32.  
20 Ed. 4. 5.  
22 Ass. 54.  
2 H. 7. 11.  
Plowden, 379.  
L. Quin. Ed.  
27.  
11 Ed. 4. 1.

And some have gone so far as to hold, that an office concerning the administration of justice, or the commonwealth, shall be forfeited for a bare non-user, whether any special damage be occasioned thereby or not; but this opinion doth not appear to be warranted by any resolution in point, and the authorities (a) which are cited to maintain it do not seem to come up to it.

However it cannot but be very reasonable, that he who so far neglects a public office, as plainly to appear to take no manner of care of it, should rather be immediately displaced, than the public be in danger of suffering that damage which cannot but be expected some time or other from his negligence.

*Sect. 2.* But it would be endless to enumerate all the particular instances wherein an officer may be discharged or fined; and it also seems needless to endeavour it, because they are generally so obvious to common sense as to need no explication; for what can be more plain than that a gaoler deserves to be discharged and fined for (b) voluntarily suffering his prisoners to escape, or for (c) barbarously misusing them? What can be more evident than that a (d) sheriff is justly punishable for persuading a jury to underprize

(b) 9 Co. 50.

(c) Raym. 216.

(d) C. Jac. 426.

underprize goods in the execution of *feri facias*, &c.? And therefore I shall leave the particular cases of this nature to every man's own judgment, which, from the consideration of the general rules above-mentioned, and the various circumstances of every case, will easily discern how far each offence of this kind deserves to be punished.

See 4 Comyns's  
Digest tit.  
"Officer."

Under this head may be ranked another offence of deep malignity, namely, the oppression and tyrannical partiality of judges, justices, and other magistrates in the administration of, and under colour of their offices. However, when this offence is prosecuted, either by impeachment in parliament, or by information in the court of King's Bench, (according to the rank of the offenders,) it is punished with forfeiture of their office, either consequential or immediate, fines, imprisonment, or other discretionary censure, regulated by the nature and aggravations of the offence committed. Bl. Com. vol. 4. c. 10.

#### *Duress by Gaolers.*

Under this head may also be classed duress by gaolers; since it is the duty of a gaoler to treat his prisoner with all the humanity and kindness not inconsistent with his safe custody, or with the sentence of the law by which he is confined, and to prevent abuses, &c.

To prevent abuses by the extensive power which the law is obliged to repose in gaolers, it is enacted by 14 Edw. 3. c. 10. "That if any keeper of a prison, or under-keeper, by too great duress of imprisonment, and by pain, make any prisoner that he hath in his ward to become an appellor against his will, he is guilty of felony."

Gaoler compelling prisoner to become an appover.  
1 Hale, 640.  
641. 601.  
S. P. C. 36. C.  
3 Inst. 91.  
2 Inst. 589.  
381.

*Sect. 2.* And it is said to be no way material, whether the improvement be true or false, or whether the appellee be acquitted or condemned; but at common law this offence was esteemed a misprision only, unless the appellee were hanged by reason of the appeal.

† *Sect. 3.* It has been determined, that gaolers, as well *de facto* as *de jure*, are liable to attachment for contempt of court, and to fine, imprisonment, and forfeiture of office for gross and palpable abuses; as in treating criminals with barbarity, extorting money, not making lawful deliverance, or suffering them to escape; and that if death be the consequence of their harsh treatment, it is felonious homicide.

4 Ed. S. c. 10.  
2 Inst. 43. 53.  
381.  
Co. Lit. 233.  
4 Co. 44.  
9 Co. 50.  
Ray. 216.  
Lev. 71.  
2 Hawk. 151.  
Post. 321.

3 Mod. 143. 3 Inst. 91.

† *Sect. 4.* By 31 Car. 2. c. 2. s. 9. "If any person shall be committed to any prison, for any criminal or supposed criminal offence, he shall not be removed from thence, unless it be by *habeas corpus*, or some other legal writ: or where he is removed from one prison or place to another, within the same county, in order to his trial or discharge; or in case of sudden fire or infection, or other necessity; on pain that the person signing any warrant for such removal, and the person executing the same,

When only to be removed.



"same, shall forfeit for the first offence one hundred pounds, and for the second two hundred pounds, to the party grieved."

† *Sect. 5.* But by 19 Car. 1. c. 4. s. 2. "On emergent occasions, as in case of infectious diseases, the sheriff or gaoler, with the advice and consent of three or more justices may, if they shall find it needful, provide other safe places (with the owner's consent) for the removal of sick or other persons out of the usual gaols."

Debtors and felons to be kept separate.

† *Sect. 6.* By 22 and 23 Car. 2. c. 20. s. 13. "The gaoler shall not put, keep, or lodge prisoners for debt and felons together in one room or chamber; but they shall be put, kept, and lodged separate and apart from one another in distinct rooms; on pain of forfeiting his office, and treble damages to the party grieved."

Transports to be kept separate from other prisoners.

† *Sect. 7.* And by 31 Geo. 3. c. 46. s. 9. "As long as any person under sentence of transportation shall continue in the common gaol, the gaoler shall separate such convict, as far as conveniently may be, from every person in his custody, except prisoners convicted of felony."

Dalt. c. 170.

† *Sect. 8.* Nevertheless, it seemeth generally in all cases where a man is committed to prison, especially if it be for felony, or upon an execution, or but for a trespass or other offence, every gaoler ought to keep such prisoner in safe and close custody; safe, that he cannot escape; and close, without conference with others or intelligence of things abroad.

Dalt. c. 170.  
8 Co. 100.

† *Sect. 9.* And therefore if the gaoler shall license a prisoner to go abroad for a time, and then to come again, or to go abroad with a keeper, though he come again, yet these are escapes. (1)

To prevent extortion in gaolers, vide 32 G. 3. c. 28.

To prevent the extortionate practices of sheriff's officers, the statute of 32 Geo. 2. c. 28. enacts many regulations to save unfortunate debtors, when they are arrested, from the exactions of bailiffs and other inferior officers of the law.

### *Of Bribery.*

3 Inst. 145.

Bribery, in a strict sense, is taken for a great misprision of one in a judicial place taking any valuable thing whatsoever, except meat and drink of small value, of any one who has to do before him any way, for doing his office, or by colour of his office, but of the king only.

### *Sect.*

(1) It is lawful for a gaoler to hamper his prisoner with irons to prevent his escape. 1 H. 6. 601. And Dalt. says, that it is lawful for a gaoler to keep a debtor charged in execution in irons (c. 170.); for this he cites the authority of Lord Coke, 3 Rep. 44. Boyton's case, who there certainly says, "the sheriff may keep them who are in execution in fetters and irons, to the end they may the sooner satisfy their creditors." But this piece of law may well be doubted, because Coke, as his authority, refers to the words of the stat. of W. 2. c. 11. "quod carceri mancipientur in ferris." But it is most clear that by the stat. it only refers to bailiffs, receivers, servants, &c.

who on account are found in arrear, the words being: "*De servientibus ballivis, camerariis et quibuscumque receptoribus qui ad compotum reddendi tenentur; concordatum est et statutum, quod cum dominus hujusmodi servientium dederit eis auditores compoti, et contingat ipsos esse in arreragiis super compotum suum omnibus allocatur et allocandis arrestentur coram pona eorum et mittantur gaole et carceri mancipientur in ferris, et sub bona custodia, &c.*" It is also observable that in the comment upon the stat. of W. 2. Lord Coke does not give it this construction, but expressly says, that at common law a prisoner could not be put in irons; in which he is confirmed by many older authorities.

*Sect. 2.* But bribery in a large sense is sometimes taken for the receiving or offering of any undue reward, by or to any person whatsoever, whose ordinary profession or business relates to the administration of public justice, in order to incline him to do a thing against the known rules of honesty and integrity; for the law abhors any the least tendency to corruption in those who are any way concerned in its administration, and will not endure their taking a reward for the doing a thing, which deserves the severest of punishments. (1)

3 Inst. 149.  
Hobart, 9.  
C. Jac. 65.  
1 Levinz, 40.  
2 Salkeld, 695.  
11 Mod. 193.

*Sect. 3.* Also bribery sometimes signifies the taking or giving of a reward for offices of a public nature. And surely nothing can be more palpably prejudicial to the good of the public, than to have places of the highest concernment, on the due execution whereof the happiness of both king and people doth depend, disposed of not to those who are most able to execute them, but those who are most able to pay for them; nor can any thing be a greater discouragement to industry and virtue, than to see those places of trust and honour, which ought to be the rewards of those who by their industry and diligence have qualified themselves for them, conferred on such who have no other recommendation but that of being the highest bidders; neither can any thing be a greater temptation to officers to abuse their power by bribery and extortion, and other acts of injustice, than the consideration of the great expense they were at in gaining their places, and the necessity of sometimes straining a point to make their bargain answer their expectation.

Vide Noy, 102.  
Moore, 781.

For these reasons, among many others, it is expressly enacted by 12 Rich. 2. c. 2. "That the chancellor, treasurer, keeper of the privy seal, steward of the king's house, the king's chamberlain, clerk of the rolls, the justice of the one bench and of the other, barons of the exchequer, and all other that shall be called to ordain, name, or make justices of the peace, sheriffs, escheators, customers, comptrollers, or any other officer or minister of the king, shall be firmly sworn that they shall not ordain, name, or make any of the above-mentioned officers for any gift or brokerage, favour or affection, nor that none which sueth by himself or by others, privily or openly. to be in any manner of office, shall be put in the same office, or in any other, but that they make all such officers and ministers of the best and most lawful men, and sufficient to their estimation and knowledge."

By 4 Hen. 4. c. 5. "No sheriff shall let his bailiwick to farm to any man, for the time that he occupieth such office, &c."

By 5 and 6 Edw. 6. c. 16. it is also enacted, "That if any person shall bargain or sell, or take any reward, or promise of any reward, for any office, or the deputation of any office, any way concerning the king's revenue, or the keeping of his castles, or the administration or execution of justice (unless it be such

Vide Noy, 102.  
Moore, 781.

"an

(1) Therefore to bribe persons, either by giving money or promises, to vote at elections of members of corporations, which are erected for the sake of public government, is an offence for which an

information will lie. 2 Ld. Ray. 1577. 1 Black. 383. But the court will grant an information for this offence very cautiously, since the additional penalties by statute. 1 Black. 380. *Infra* sect. 7.

## OFFENCES AGAINST PUBLIC JUSTICE Bl. 1.

"an office as had been usually granted before the making of the said act by the justices of the King's Bench or Common Pleas, or by justices of assize), that then every such person so bargaining or selling, or taking such reward, or promise, &c. shall not only forfeit his right to such office, or to the nomination thereof, but also every person who shall give any such reward or promise, &c. shall be adjudged a disabled person in law to have or enjoy such office, &c."

<sup>4</sup>In the construction of this statute of 5 and 6 Edw. 6. c. 16. the following points have been resolved.

C. Jac. 269.  
3 Inst. 148.  
Salk. 468.  
2 Lev. 289.  
2 Ven. 187.  
467.

*Sect. 4. FIRST,* That the offices of chancellor, register, and commissary in ecclesiastical courts, are within the meaning of the statute, inasmuch as those courts do not only determine matters which are brought before them merely *pro salute anime*, but also have the decision of disputes concerning the lawfulness of matrimony and legitimation of children, which touch the inheritance of the subjects, and also hold plea of legacies and tithes, &c. in which respects they are courts of justice; but it hath been adjudged, that no office in fee is within the statute.

2 Lev. 151.  
Hobart, 75.  
Co. Lit. 234.  
C. Car. 361.  
C. Jac. 386.

*Sect. 5. SECONDLY,* That one who makes a contract for an office, contrary to the purport of the said statute, is so far disabled to hold the same, that he cannot at any time during his life be restored to a capacity of holding it by any grant or dispensation whatsoever.

Salk. 466. 468.  
6 Mod. 234.  
3 Co. 32.  
C. Eliz. 529,  
530.  
1 And. 107.  
150.

*THIRDLY,* That a bond by a deputy of an office to pay a certain sum at all events, is within the statute; and consequently totally void, though it also contain other conditions which, if they stood by themselves, would be good; but not a bond to pay half the profits of a certain sum out of the profits of the office for a deputation.

Salkeld, 411.

*FOURTHLY,* That the statute extends not to officers in the plantations.

As to how bribery is punishable.

3 Inst. 145.  
1 Hale, 262.  
1 Leon. 295.  
C. Jac. 65.  
1 Rush. Col. 31.

*Sect. 6.* It is said, that, at common law, bribery in a judge, in relation to a cause depending before him, was looked upon as an offence of so heinous a nature, that it was sometimes punished as high treason before the 25 Edw. 3; and at this day it is certainly a very high offence, and punishable, not only with the forfeiture of the offender's office of justice, but also with fine and imprisonment, &c.

3 Inst. 118.

*Sect. 7.* Also all the other above-mentioned kinds of bribery, taken in a large sense, seem to be punishable with fine and imprisonment, &c. And in the time of King James the First, the Earl of M. lord high treasurer of England, being impeached by the commons, for refusing to hear petitions referred to him by the king till he had received great bribes, and for other such like misdemeanors, was, by sentence of the lords, deprived of all his offices, and disabled to have any for the future, or to sit in the parliament,

liament, and was fined fifty thousand pounds, and imprisoned during the king's pleasure. (2)

† *Sect. 8.* And it is enacted by 7 and 8 Will. 3. c. 7. "That all contracts, promises, bonds, and securities whatsoever, made or given to procure any return of any member to serve in parliament, or thing relating thereunto, shall be adjudged void; and that whoever makes or gives such contract, security, promise, or bond, or any gift or reward, to procure a false or double return, shall forfeit £300; one third to the king; one third to the poor; one third to the informer; to be recovered by action or information. (3)

† *Sect. 9.* And it is further enacted by 2 Geo. 2. c. 24. "That if any person having or claiming a right to vote at any election for members of parliament, shall ask, receive, or take any money, or other reward, by way of gift, loan, or other device, or agree or contract for any money, gift, office, employment, or other reward whatsoever, to give his vote, or to refuse or forbear to give his vote in any such election, or if any person by himself, or any person employed by him, doth or shall by any gift or reward, or by any promise, agreement, or security for any gift or reward, corrupt or procure any person or persons to give his or their vote or votes, or to forbear to give his or their votes in any such election, such offender shall for every offence forfeit £500, together with full costs of suit, by action or information at Westminster. And any person offending in any of the said cases, from and after judgment has been so obtained against him, or by summary action, or prosecution, or being any otherwise lawfully convicted thereof, shall be for ever disabled to vote in any election for members of parliament, or to hold, exercise, or enjoy any office or franchise as a member of any city, borough, town corporate, or cinque port, as if he was dead."

*Sect. 10.* But it is further enacted, "That if such offender, within twelve months next after such election, discover any other offender, so that he be hereupon convicted, such offender so discovering, and not having been before that time convicted of any offence against this act, shall be indemnified and discharged from all penalties and disabilities which he shall then have incurred by any offence against this act. Provided the prosecutions be commenced within two years, which commencement shall be (by 9 Geo. 2. c. 38.) the actual arrest, summons, or service of process. (4)

Of

(2) This was the case of the Earl of Middlesex, who had been raised by Buckingham's interest from the rank of a London merchant to be lord high treasurer of England, but having incurred the displeasure of his patron, the favourite vowed revenge, and employed all his credit with the commons to procure the impeachment of the treasurer; but the charges against him were neither numerous nor important, the whole measure very dissatisfactory to the king, and the fine was remitted upon the accession of Charles the First. *Parl. Hist.* vol. vi. p. 191.

An attempt to induce a man to advise the king, under the influence of a bribe, is criminal, though never carried into execution, 4 Burr. 2499. Offering money to a privy councillor to procure the reversion of an office in the gift of the crown, has been adjudged a misdemeanour, and punishable by information, *Rex v. Vaughan*.

(3) But if it appears to be a void election, an action for this penalty is not maintainable. *Ld. Ray.* 904.

(4) This statute does not take away the common law process by indictment or information for bribery

*Of Extortion.*

In treating of extortion, I shall consider,

1. What shall be called extortion.

2. How it shall be punished.

'As to the FIRST POINT, viz. What shall be called extortion.

Co. Lit. 368

10 Co. 102.

3 Inst. 119.

C. Car. 438.

448.

Hutton, 53.

3 Inst. 68.

1 Ray. 149. 11 Mod. 80. 137. Salkeld, 382.

*Sect. 1.* It is said, that extortion in a large sense signifies any oppression under colour of right; but that, in a strict sense it signifies the taking of money by any officer, by colour of his office, either where none at all is due, not so much is due, or where it is not yet due.

2 Inst. 209.

Co. Lit. 368.

*Sect. 2.* It is said, that at the common law, which was affirmed by the statute of Westminster the first, c. 26. it was extortion for any sheriff, or other minister of the king, whose office did any way concern the administration or execution of justice, or the common good of the subject, to take any reward whatsoever for doing his office, except what he received from the king. And surely this was a most excellent institution, highly tending to promote the honour of the king, and the ease of the people, and hath been always thought to conduce so much to the public good, that all prescriptions whatsoever which have been contrary to it, have been holden to be void; and upon this ground it hath been resolved, that the prescription by virtue whereof the clerk of the market claimed certain fees for the view and examination of all weights and measures, &c. was merely void.

42 Ed. 3. 4, 5.

2 R. Abr. 266.

Cro. Cir. 250.

4 Inst. 274.

Moor, 523.

2 Inst. 209.

21 II. 7. 17.

*Sect. 3.* But it hath been holden, that the fee of twenty-pence, commonly

bribery at elections for members of parliament. But as the offender would be equally liable to the penalties of the statute, vide 1 Black. 524. the court will not grant an information until the two years are expired, 3 Burr. 1337. except in particular cases, founded on particular reasons, 3 Burr. 1340. And it seems as if the court would adjourn passing sentence on a conviction by indictment, on the defendant's entering into a recognizance to appear on the day when the time limited for bringing the *qua tam* action will expire, 3 Burr. 1339. but the court will not, after that time has elapsed, prolong the judgment on account of the defendant's having indicted one of the witnesses upon whose testimony he was convicted, because being so much interested he could not be admitted a witness. 3 Burr. 1363. 1 Black. 404. Nor will they stay the judgment on the *pacta* in an action for this injury, on affidavits that the defendant is a discoverer. 3 Wilson, 55. Nor will they grant a new trial because a witness was *particeps criminis*. Sayer, 290. But they will grant a new trial if, upon a special case, the jury have not found who was the first discoverer, although they find that the defendant produced a judgment by which it appeared that he had obtained a verdict against a third person upon this fact; for it does not follow conclusively that the person who obtains the verdict is necessarily the discoverer. 4 Burr. 2504. 2469. And it has been determined, that the person who makes an affidavit of the fact upon which another

obtains a verdict, is the true discoverer. 4 Burr. 2486. And although a verdict is not a conviction until it be completed by a judgment, yet, after it is so completed, which the court will grant leave to do, it will relate back to the time of the original discovery. *Ibid.* 1 Black. 665. Vide also The Cockade Case, one volume octavo, published by E. Cooke, 1783. also 22 Geo. 3. c. 31.

If the elector is bribed by a friend of the candidate, and exchanges a note to insure the vote, it is a bribe within the act, although the elector voted for the opposite party. 3 Burr. 1235. 1 Black. 517. And so also is laying a wager with the voter that he does not vote for a particular candidate. Loft, 552. Vide also Allen v. Hearne, Mich. 26 Geo. 3. 1 Term. Rep. 30. And by giving the elector money, he admits his right to vote, and shall not be permitted afterwards to controvert it. 3 Burr. 1586. Nor is it necessary that the candidate should have declared himself at the time the bribe was given, because asking a vote for him under the title of the candidate's friend, makes him a candidate. Coomb v. Pitt, 5 Geo. 3. 1 Black. 523. Nor is it necessary that the person bribed should actually have a right to vote. 3 Wils. 35. But in an action the declaration must state what the defendant received or took as a reward, and whether money, or what particular species of reward, and not indefinitely and disjunctively, "that he took a reward;" and being upon a criminal charge, this defect is not helped by verdict. 4 Burr. 2471.

commonly called the bar-fee, which hath been taken, time out of mind, by the sheriff, of every prisoner who is acquitted, and also the fee of one penny, which was claimed by the coroner of every visne, when he came before the justices in eyre, are not within the meaning of the statute, because they are not demanded by the sheriff or coroner for doing any thing relating to their offices, but claimed as perquisites of right belonging to them, whether they do any thing or not. But there seemeth to be no necessity for this distinction, for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence, from allowing reasonable fees for the labour and attendance of their officers. For the chief danger of oppression is from officers being left at their liberty to set their own rates on their labour, and make their own demands; but there cannot be so much fear of these abuses while they are restrained to known and stated fees, settled by the discretion of the courts, which will not suffer them to be exceeded without the highest resentment. (1)

2 Inst. 210.  
2 Inst. 176.  
S. P. C. 49.

21 H. 7. 17.  
Co. Lit. 368.

*Sect. 4.* Also it having been found by experience, that generally it is in vain to expect that any officers who depend upon a known fixed salary, without having any immediate benefit from any particular instances of their duty, should be so ready in undertaking, or diligent in executing them, as they would be if they were to have a present advantage from them, it hath been thought expedient to permit them to take certain fees in many cases, but it is certain that they are guilty of extortion if they take any thing more. Also it hath been resolved, that a promise to pay them money for the doing of a thing which the law will not suffer them to take any thing for, is merely void, however freely and voluntarily it may appear to have been made; for if once it should be allowed that such promises could maintain an action, the people would quickly be given to understand how kindly they would be taken, and happy would that man be who could have his business well done without them. (2)

3 Inst. 149.  
2 Inst. 210.  
Co. Lit. 368.  
1 R. Abr. 6.  
26. 41.  
1 Roll. 313.  
Noy, 76.  
1 Jones, 65.  
C. Eliz. 634.  
Moore, 168. 323.  
C. Jac. 103.

As to the SECOND POINT *viz.* How extortion shall be punished.

*Sect. 5.* There is no doubt, but that at common law it is severely punishable at the king's suit, by fine and imprisonment; and also by a removal from the office, in the execution whereof it was committed.

11 Mod. 82.  
2 R. Abr. 32.  
3. ....  
Raym. 315.  
2 Inst. 209.  
3 Leon. 268.  
3 Ed. 1. c. 26.  
*Sect.* 1 Strange, 74.

(1) For the fees allowed to the several officers, vide 3 Com. Dig. 323, 324. 1 Modern, 5. 11 Modern, 89. Ld. Ray. 4. 103. 9 and 10 Will. 3. c. 41. 29 Eliz. c. 4. 3 Jac. 1. c. 7. 10 and 11 Will. 3. c. 23. s. 8. 3 Geo. 1. c. 15. 17 Geo. 3. c. 26. s. 6. Cro. Cir. 233.

(2) It is extortion to oblige an executor to prove a will in the bishop's court, and to take fees thereon, knowing the same to have been proved in the prerogative court. Strange, 73. Or in a sheriff's officer to admit a prisoner to bail, upon an agreement to receive a certain sum when the prisoner should pay to a third person another sum of money. 2 Burr. 924. To arrest a man in order to obtain a release from him. 8 Mod. 189. In a

gaoler to obtain money from his prisoner by any colourable means. 8 Mod. 226. Stra. 375. Or in a church-warden *colore officii*. 1 Sid. 307. In a miller, if he takes more for toll than is due by custom. Ld. Ray. 149. Or a commissary for absolution. 3 Leo. 268. Or a ferryman more for his ferry. 4 Mod. 101. Or to seize upon the place where a fair is held, and by building stalls, to force an exorbitant price for them. Ld. Ray. 150. Or in an under-sheriff to refuse to execute process till his fees are paid. Salk. 330. Or to take a bond for his fee before execution is sued out. Hut. 53. Or for a coroner to refuse his view until his fees be paid. 3 Inst. 149.

*Sect. 6.* Also extortion in sheriffs, escheators, bailiffs, gaolers, the king's clerk of the market, and other inferior ministers and officers of the king, whose offices do any way concern the administration or execution of justice, or the common good of the subject, or for the king's service, hath a further additional punishment by the above-mentioned statute of Westminster, by which it is enacted, "That no sheriff, nor other king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king, and that he who so doth, shall yield twice as much, and shall be punished at the king's pleasure." (3)

*Altering and Vacating Records by Clerks.*

The offence of altering and erasing of records by clerks, which is an offence against the Public Justice, has already been treated of under the title of "Forgery," *vide ante*, p. 266.

OFFENCES AGAINST PUBLIC JUSTICE BY  
PRIVATE PERSONS.

The offences against public justice, which may be committed by private persons, may be reduced to the following heads:—

1. Personating others in courts of justice.
2. Returning from transportation.
3. Practising as an attorney after having been convicted of perjury, &c.
4. Perjury and subornation of perjury.
5. Conspiracy.
6. Maintenance.
7. Champerty.
8. Embracery.
9. Buying or selling a pretended title.
10. Compounding a penal action, without leave of the court, by common informer.
11. Breach of prison, rescue, escapes, &c.

1. *Personating others in Courts of Justice.*

By stat. 21 J. 1. c. 26. it is enacted, "All and every person and persons who shall acknowledge, or procure to be acknowledged, any fine or fines, recovery or recoveries, deed or deeds inrolled

(3) And a writ of action lies to recover the double value, 3 Co. Dig. 323. But the indictment which may be brought at the sessions, Str. 73. or information, must state the fact particularly, 3 Leo. 268, 25 Edw. 3. st. 3. c. 9. 11 Mod. 80. It must also specify the time when the offence was committed, 4 Mod. 101. 103. But although it be omitted to be stated for what the thing extorted was taken, yet it is good after verdict, Sid. 91. And, in general, the King's Bench will oblige the

party to demur to a defective indictment for extortion, 5 Mod. 13. And whatever may be the sum, if there is proof only of a shilling taken, the defendant is guilty; for the taking is the offence, and not the contract, Ld. Ray. 149. And he also who assists is equally guilty, for there are no accessaries in extortion, Str. 73. Extortion may be laid in any county, by the 31 Eliz. c. 5. See *vide* 2 Hawkins, ch. 26. s. 50.

“ inrolled, statute or statutes, recognizance or recognizances, bail  
“ or bails, judgment or judgments, in the name of any other per-  
“ son or persons, not privy or consenting to the same, and being  
“ thereof lawfully convicted or attainted, shall be adjudged, de-  
“ creed, and taken to be felons, and suffer the pains of death,  
“ and incur such forfeitures and penalties as felons convicted or  
“ attainted lose and forfeit, without the benefit of clergy to be  
“ allowed to any such offender (saving corruption of blood and  
“ loss of dower).

*Sect. 2.* Not to extend “ to any acknowledgments acknow-  
“ ledged by any attorney or attornies of record, for any person or  
“ persons against whom any such judgment or judgments shall  
“ be had or given.”

*Sect. 3.* In the construction hereof it has been holden, that if a 2 Jon. 64.  
man personate another in the county of *A.* in putting in bail be-  
fore a judge, and the bail be filed in the county of *B.* the trial  
shall be in the county of *A.*

† *Sect. 4.* Also it seems, that the bare personating of bail be-  
fore a judge is no felony, unless the bail be filed.

Contra in the  
report of the  
same case,  
1 Ven. 301, 302.

† *Sect. 5.* It seems also, that if bail be put in in the names of  
persons who have no existence, the offender cannot be prose-  
cuted upon this statute for felony, in having personated bail; but  
the court may order him to be set on the pillory for the misde-  
meanour.

Anonymous,  
1 Stra. 384.

† *Sect. 6.* It seems also, that if the person personated can  
clearly make out the fact upon affidavit, the court will relieve him  
from the liability of payment by vacating the record.

Beckman's case,  
12 Mod. 257.

† *Sect. 7.* By 4 Will. and Mary, c. 4. s. 1. it is enacted, “ That  
“ the chief justice, and other the justices of the court of King's  
“ Bench for the time being, or any two of them, whereof the  
“ chief justice for the time being to be one for the said court of  
“ King's Bench, and the chief justice of the court of Common  
“ Pleas, and other the justices there for the time being, or any  
“ two of them, whereof the chief justice of the same court to be  
“ one for the said court of Common Pleas, and also the chief  
“ baron and barons of the quoir of the court of the Exchequer for  
“ the time being, or any two of them, whereof the chief baron for  
“ the time being to be one for the said court of Exchequer, shall  
“ or may, by one or more commission or commissions under the  
“ several seals of the said respective courts, from time to time, as  
“ need shall require, empower such and so many persons, other  
“ than common attornies and solicitors, as they shall think fit and  
“ necessary, in all and every the several shires and counties within  
“ the kingdom of England, dominion of Wales, and town of Ber-  
“ wick upon Tweed, to take and receive all and every such recog-  
“ nizance or recognizance of bail or bails, as any person or per-  
“ sons shall be willing or desirous to acknowledge or make before  
“ any of the persons so empowered, in any action or suit depend-  
“ ing, or hereafter to be depending, in the said respective courts,  
“ or any of them, in such manner and form, and by such recog-  
“ nizance or bail-piece, as the justices and barons of the said re-  
“ spective courts have used to take the same; which said recog-  
“ nizance

Chief justice,  
&c. may make  
any persons,  
except attornies  
and solicitors,  
commissioners  
to take bail in  
the country.



Justices, &c. to receive the bail-piece upon affidavit of due execution.

Bail taken below to be as *de bene esse*.

Power given to justices, &c. to make rules for justifying, but not to order the person's appearance.

London, &c.

Justices of assize may take bail.

Felony for any person to be bail in another man's name,  
21 Jac. 1. c. 26.

"nizance or recognizance of bail or bail-piece, so taken as aforesaid, shall be transmitted to some, or one, of the justices or barons of the said respective courts where such action or suit shall be depending, who, upon affidavit made of the due taking of the recognizance of such bail or bail-piece by some credible person present at the taking thereof, such justice or baron shall receive the same, upon payment of such fees as have been usually received for the taking of special bails by the justices' and barons' clerks, and other the officers of the said respective courts; which recognizance of bail or bail-piece, so taken and transmitted, shall be of the like effect as if the same were taken *de bene esse* before any of the said justices and barons; for the taking of every which recognizance or recognizances of bail or bail-piece, the person or persons so empowered shall receive only the sum or fee of two shillings, and no more."

† Sect. 8. By 4 Will. and Mary, c. 4. s. 2. it is further enacted, "That the justices and barons respectively in the several courts shall make such rules and orders for the justifying of such bails, and making of the same absolute, as to them shall seem meet, so as the cognizor or cognizors of such bail or bails be not compelled to appear in person in any of the said courts, to justify him or themselves, but the same may and is hereby directed to be determined by affidavit or affidavits duly taken before the said commissioners, who are hereby empowered and required to take the same, and also to examine the sureties upon oath touching the value of their respective estates, unless the cognizor or cognizors of such bail do live within the cities of London and Westminster, or within ten miles thereof."

† Sect. 9. By 4 Will. and Mary, c. 4. s. 3. it is further enacted, "That any judge of assize, in his circuit, shall and may take and receive all and every such recognizance and recognizance of bail or bails as any person shall be willing and desirous to make and acknowledge before him, which being transmitted in like manner as aforesaid, shall (without oath) be received in manner as aforesaid, upon payment of the usual fees."

† Sect. 10. By 4 Will. and Mary, c. 4. s. 4. it is further enacted, "That any person or persons who shall, before any person or persons empowered by virtue of this act as aforesaid, to take bail or bails, represent, or personate any other person or persons, whereby the person or persons so represented and personated may be liable to the payment of any sum or sums of money for debt or damages to be recovered in the same suit or action, wherein such person or persons are represented and personated, as if they had really acknowledged and entered into the same, being lawfully convicted thereof, shall be adjudged, esteemed, and taken to be felons, and suffer the pains of death, and incur such forfeitures and penalties as felons in other cases convicted or attainted do by the law of England lose and forfeit."

## Ch. 27. BY PRIVATE PERSONS.—*Transportation.*

### 2. *Of Returning from Transportation.*



† *Sect. 1.* By 4 Geo. 1. c. 11. s. 1. “All offenders convicted of grand or petit larceny, or any other felonious taking, except the buying or receiving of stolen goods, whose crimes are *within* the benefit of clergy, and for which they are liable only to be burned in the hand or whipped; and also all offenders whose crimes, on conviction, exclude them from the benefit of clergy, to whom his majesty shall extend his royal mercy, on condition of such transportation, signified under the great seal, by one of the principal secretaries of state, shall and may be transported to America for seven years.” Transportation to America.

*Sect. 2.* By 4 Geo. 1. c. 11. s. 1. “All offenders convicted of knowingly buying or receiving stolen goods, to whom such conditional mercy shall be extended generally, shall be transported to America for the term of fourteen years, or such other term as shall be made part of such condition.”

*Sect. 3.* By 4 Geo. 1. c. 11. s. 2. “If any offender or offenders, so ordered to be transported for any term of seven years, or fourteen years, or other time or times as aforesaid, shall return into any part of Great Britain or Ireland before the end of his or their said term, he or she so returning as aforesaid, shall be liable to be punished as any person attainted of felony, without the benefit of clergy, and execution shall and may be awarded against such offender or offenders accordingly.” Provided nevertheless, “That the king may at any time pardon, and dispense with any such transportation, and allow of the return of any such offender or offenders from America, upon the terms as described in the act.”

† *Sect. 4.* And whereas some felons ordered for transportation have already, and others may, come on shore, and return to Great Britain, before they have been actually transported to America, or may break gaol, or escape before such transportation; it is thereupon enacted, by 6 Geo. 1. c. 23. s. 6. “That if any felon or felons who shall be ordered for transportation, shall be afterwards at large within Great Britain, without some lawful cause, before the expiration of the term for which such felon or felons was, were, or shall be ordered to be transported, all and every such person and persons, being thereof lawfully convicted, shall suffer death, as in cases of felony, without benefit of clergy.”

† *Sect. 5.* And by 6 Geo. 1. c. 23. s. 7. To the intent that such conviction may be as little trouble as possible, it is further enacted, “That such offender may be tried either before justices of assize, *oyer* and *terminer*, or gaol-delivery, for the county, city, or liberty where he, she, or they shall be apprehended and taken, or before justices of assize, *oyer* and *terminer*, or gaol-delivery for that county, city, or place from whence he, she, or they were ordered to be transported; and that the clerk of the assize and the clerk of the peace where such orders for transportation shall be made, shall, at the request of the prosecutor, or any other in his majesty’s behalf, certify a transcript, briefly and in few words, containing the effect” Mode of trial.

§ 3.

"effect and tenor of every indictment and conviction of such man or woman, and of the order or contract for his or her transportation, to the justices of assize, *oyer* and *terminer*, or gaol-delivery, where such man or woman shall be indicted; which shall, on production of it, be a sufficient proof of the former conviction and order for transportation."

Convicts transporting themselves, &c.

† *Sect. 6.* By 16 Geo. 2. c. 15. it is recited, "That many felons who had agreed, upon certain conditions, to transport themselves, either for life, or for some term or number of years, had already, and might hereafter, come on shore or return:" and enacted, "That if any felon, or other offender, already ordered, or hereafter to be ordered, for transportation, or who hath already, or hereafter shall agree to transport him or herself, on certain conditions, to America, either for life or any number of years, shall be afterwards at large within any part of Great Britain, without some lawful cause, before the expiration of the term for which he or she were so ordered to be transported, or had so agreed to transport him or herself; all and every such person or persons, being thereof lawfully convicted, shall suffer death, without benefit of clergy."

† *Sect. 7.* By 8 Geo. 3. c. 15. it is recited, "That offenders excluded from the benefit of clergy are frequently reprieved by the judge who tries them, and, upon his recommendation, may receive mercy, on condition of transportation to America for life, or for the term of fourteen years:" and enacted, "That where, upon such recommendation, such offenders shall receive mercy as aforesaid, signified by a principal secretary of state to the judge so recommending, it shall be lawful for every such judge to make an order for the immediate transportation of every such offender, which shall be as good and effectual, and be considered as if the same had been made during the continuance of the assizes at which such offender was, or shall be, convicted. But if such offender, so ordered for transportation, shall be afterwards at large within any part of Great Britain, without some lawful cause, before the expiration of the term for which such offender shall have been ordered to be transported, every such person, being thereof lawfully convicted, shall suffer death, without benefit of clergy, and shall be tried in like manner as other felons found at large before the expiration of their term."

Transportation beyond the seas; continued to the 1st of June, 1787, by 24 Geo. 3. c. 56. *Barrington on the Statutes*, p. 445 to 447.

† *Sect. 8.* But America having at length separated from its connection with Great Britain, the punishment of felons and other offenders, by transportation to the plantations, was attended with many difficulties; and it is therefore enacted by 19 Geo. 3. c. 74. "That when any person, in England or Wales, shall be lawfully convicted of grand or petit larceny, or any other crime for which he is liable to be transported to America, such person shall, if the court shall think fit, be ordered to be transported to any parts beyond the seas, whether the same be situated in America or elsewhere, in such and the like manner, and for the same term, as and for which such person is or shall be liable to be transported to America."

† *Sect.*

† *Sect. 9.* And by 19 Geo. 3. c. 74. it is further enacted, "That when any such person, who shall be so convicted, shall, in consequence thereof, be ordered to be transported to any parts beyond the seas, or if his Majesty shall extend his mercy to any offender, convicted or attainted of any felony excluded from clergy, upon condition of *(a)* transportation to any parts beyond the seas as aforesaid, then in any such cases all laws, statutes, usages, and customs now in force with regard to transportation to America, and their punishment for being afterward at large within any part of Great Britain before the expiration of the several terms for which they were ordered to be transported, or had agreed to transport themselves, and particularly the several provisions contained in the 4 Geo. 1. c. 11. 6 Geo. 1. c. 23. 16 Geo. 2. c. 15. and the 8 Geo. 3. c. 15. shall take place, and be in force and enure, with regard to the transportation of such offenders, and with regard to their punishment for being afterwards at large as aforesaid, in like manner as if the same had been repeated, and specially inserted in this act."

*(a)* For the form in which conditional pardons are now worded. Vide b. 2.

† *Sect. 10.* By 19 Geo. 3. c. 74. s. 27. it is also enacted, "That male offenders convicted of any crime, except petit larceny, for which they are liable to transportation, may in lieu thereof, if the Court shall think fit, be punished by being kept on board ships or vessels, (commonly called the hulks,) and employed in raising sand, soil, or gravel from the river Thames, &c. &c. for such term not less than one year, nor exceeding five years. Or, in case such offender shall be liable to be transported for fourteen years, not exceeding seven years, as the Court shall think fit to order and adjudge."

Labour on board the hulks.

† *Sect. 11.* By 19 Geo. 3. c. 74. s. 28. it is also enacted, "That where any male offender shall be lawfully convicted of any robbery, or other felony without benefit of clergy, and mercy, notified in writing by a secretary of state as aforesaid, shall be extended to such offender, upon condition of being kept to hard labour during any specified term, such mercy may be allowed in the same manner as if there was a conditional pardon under the great seal, and the Court *(b)* may and shall order such offender to be kept to hard labour as aforesaid, for the time specified in the notification from the secretary of state."

*(b)* Vide the act.

† *Sect. 12.* By 19 Geo. 3. c. 74. it is further enacted, "That if any person who hath been ordered to hard labour instead of transportation, shall break from the custody of the keepers, or escape, they shall be punished by an addition of three years to the term for which he or she, at the time of his or her breach of prison, or escape, was subject to be confined; and if such person so punished by such addition to the term of confinement, shall afterwards be convicted of a second escape or breach of prison, he or she shall be adjudged guilty of felony without benefit of clergy."

N. B. This act inflicts the punishment of death upon those who being ordered to hard labour instead of being capitally punished, in any of the places of confinement mentioned in the

act, shall break from their keepers or escape. But as this part of the act was never carried into execution, the insertion of it is omitted.

† *Sect.*

Transportation  
to such places  
as the king shall  
appoint.

† Sect. 13. But from the difficulty of immediately finding proper places, beyond the seas, for the purposes of transportation; and it being found impracticable to carry all the provisions of the 19 Geo. 3. effectually into execution; it is enacted by 24 Geo. 3. ses. 2. c. 56. which has continuance to the 1st June, 1787, 'That where offenders shall be convicted at the assizes or sessions in the manner and under the circumstances before-mentioned, " of offences for which such offenders shall be liable to be " transported, &c. it shall and may be lawful for the court to order " and adjudge, that such offenders so convicted shall be trans- " ported beyond the seas for any term of years not exceeding the " number for which they are liable to be transported. And that " in every such case it shall and may be lawful for his Majesty, by " and with the advice of his privy council, to declare and appoint " what place or places, part or parts beyond the seas, either to " within his Majesty's dominions, or elsewhere out of his Ma- " jesty's dominions, such felons or other offenders shall be con- " veyed or transported."

Death to return.

† Sect. 14. And by 24 Geo. 3. c. 56. s. 5. it is further enacted, " That if any offender who shall be so ordered, by any such " Court as aforesaid, to be transported beyond the seas, or who " shall agree to transport himself or herself, on certain condi- " tions, either for life or any number of years, to any such place " or places, part or parts, as shall be appointed by his majesty, " in manner aforesaid, shall be afterwards at large in Great Bri- " tain or Ireland, without some lawful cause, before the expira- " tion of the term for which such offender or offenders shall have " been ordered to be transported beyond the seas, or shall have " so agreed to transport himself or herself as aforesaid, every " such offender being at large as aforesaid, being thereof law- " fully convicted, shall suffer death without benefit of clergy."

N. B. The  
same mode of  
trial is ap-  
pointed as by  
sect. 3. *supra*.

Offenders in  
Scotland may  
be transported,

† Sect. 15. By 25 Geo. 3. c. 45. it is further enacted, " That " when any person or persons shall be lawfully convicted, before " any Court competent for the trial of crimes in Scotland, of " any offence for which the punishment of transportation may " be inflicted, the Court may adjudge such person or persons to " be transported beyond the seas, in like manner as is now in " use; and his Majesty, by and with the advice of his privy " council, may declare and appoint what place or parts beyond " the seas, either within his Majesty's dominions, or elsewhere " out of his dominions, such offenders shall be conveyed or " transported."

(and judge  
may allow a  
pardon on that  
condition.)

† Sect. 16. And by 25 Geo. 3. c. 46. it is also further enacted, " That when his Majesty shall extend his mercy to any offender " under sentence of death in Scotland upon condition of trans- " portation, signified by one of the principal secretaries of state, " it shall be lawful for any Court, having authority, to allow such " offender the benefit of a conditional pardon, and (except in " cases where such offender shall be authorized by his Majesty " to transport himself) to order the same in the manner the act " describes."

† Sect.

† *Sect. 17.* By 25 Geo. 3. c. 46. it is further enacted, “ That if any offender in Scotland be ordered for transportation, and such order cannot be conveniently executed, with respect to the place in such order mentioned, it shall be lawful for any two or more of the judges of the Court of Justiciary to order that such offender shall be transported to any other part beyond the seas which shall have been appointed by his Majesty as aforesaid.”

to such places  
as his Majesty  
shall appoint.

† *Sect. 18.* And by 25 Geo. 3. c. 46. s. 3. it is enacted, “ That if any offender or offenders who shall be so ordered by such Court as aforesaid to be transported beyond the seas, or who shall agree to transport himself or herself, on certain conditions, as aforesaid, or who shall be so ordered by two judges of the Justiciary, shall be afterwards at large in Great Britain or Ireland, without some lawful cause, before the expiration of the term for which such offender shall have been ordered to be transported beyond the seas, or shall have so agreed to transport himself or herself, or shall have been so ordered by two justices of the Court of Justiciary as aforesaid; every such offender, on being thereof lawfully convicted, shall suffer death, as in cases of felony without the benefit of clergy by the law of England; and such offender being found at large in Scotland may be tried there before any court of competent jurisdiction for the trial of the original offence.”

By the act of 56 Geo. 3. c. 27. (continued by 1 and 2 Geo. 4.) which makes many alterations in the laws respecting transportation, by sect. 8. enacts, “ That if any offender or offenders who shall have been or shall be so ordered by any such Court as aforesaid to be transported, or who shall have agreed or shall agree to transport himself or herself on certain conditions, either for life or any number of years, under the provisions of the said recited act of the last session of Parliament, or any other act or acts of Parliament, to any such place or places, part or parts as shall have been or shall be appointed by his Majesty in manner aforesaid, shall be afterwards at large within any part of the united kingdom of Great Britain and Ireland, without some lawful cause, before the expiration of the term for which such offender or offenders shall have been ordered to be transported, or shall have so agreed to transport himself or herself as aforesaid, every such offender being at large as aforesaid, being thereof lawfully convicted, shall suffer death, as in cases of felony without benefit of clergy; and such offender or offenders may be tried either before the justices of assize, oyer and terminer, great sessions or gaol delivery, for the county, city, liberty, borough, or place, where such offender or offenders shall be apprehended and taken, or from whence he, she, or they were ordered to be transported; and the clerk of the assize, clerk of the peace, or other officer or clerk of the Court having the custody of the records where such order of transportation shall be made, shall, at the request of the prosecutor, or any other person on his Majesty's behalf, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of every indictment “ and

Persons found  
at large before  
the expiration  
of sentence,  
shall suffer  
death.

Clerk of court  
to give a certifi-  
cate of previous  
conviction.

Fee.

Certificate to be sufficient proof of former conviction.

"and conviction of such offender or offenders, and of the order for his or her transportation, to the justices of assize, oyer and terminer, great sessions or gaol delivery, where such offender or offenders shall be indicted, (not taking for the same more than 6s. 8d.), which certificate shall be sufficient proof of the conviction and order for the transportation of such offender or offenders; and whoever shall discover and prosecute to conviction any such offender or offenders, so being at large as aforesaid, shall be entitled to a reward of £20 for every such offender so convicted, and shall have such certificate to receive the same as any person may be entitled unto for the apprehending and prosecuting to conviction persons who have committed any robbery upon the highway; provided that his Majesty may pardon and dispense with such transportation, or allow of the return of any such offender to this kingdom."

Upon these statutes the following determinations have been made.

By all the judges, on a case reserved by Bathurst, Justice.

† *Sect. 19.* That if an act of parliament direct that an offender shall be transported without saying to what place, it shall be understood to the place where convicts are, at the time, legally transported, as formerly to America, and now to Botany Bay.

Aickle's Case, Cases, C. L. 303.

† *Sect. 20.* That the Daily Book of a prison in which commitments and discharges are entered, is good, and indeed the best evidence to prove the day from which the time of transportation takes place.

Old Bailey, 1785.

† *Sect. 21.* That if a convict on his trial for returning from transportation before his time was expired, confess the fact and acknowledge that he is the man, the Court will record such confession, but that otherwise the record of the conviction must be produced, and evidence given of his identity.

Patrick Madan's Case, Cases, C. L. 197.

† *Sect. 22.* That a prisoner convicted of a capital crime, whose sentence is respited during the king's pleasure, and who, on having received a pardon on condition of transportation for life, is afterwards found at large in Great Britain without lawful cause, shall, on his being indicted for returning from transportation and acquitted, be referred back to his original sentence.

Bath's Case, Cases, C. L. 348.

† *Sect. 23.* It is also decided, that sentence of transportation may be a second time passed upon a prisoner, although the time for which he before received sentence of transportation be unexpired.

### 3. *Practising as an Attorney after having been convicted of Perjury, &c.*

Persons convicted of forgery, &c. practising as attorneys, &c. offending against this to be transported.

† *Sect. 1.* By 12 Geo. 1. c. 29. s. 4. for avoiding the great mischiefs and abuses which arise from infamous and wicked persons, already convicted of wilful perjury or forgery, practising as attorneys or solicitors, in courts of law and equity, it is enacted, "That if any person who hath been or shall be convicted of forgery, or of wilful and corrupt perjury, or subornation of perjury, or common barratry, shall act or practise as an attorney,

“attorney, or solicitor or agent, in any suit or action brought or to be brought in any court of law or equity, within that part of Great Britain called England, the judge or judges of the court, where such suit or action is or shall be brought, shall, upon complaint or information thereof, examine the matter in a summary way in open court; and if it shall appear to the satisfaction of such judge or judges, that the person complained of, or against whom such information shall be given, hath offended contrary to this act, such judge or judges shall cause such offender to be transported for seven years to some or one of his Majesty’s colonies or plantations in America, by such ways, means, and methods, and in such manner, and under such pains and penalties, as felons in other cases are by law to be transported.”

#### 4. *Of Perjury, and Subornation of Perjury.*

Of both of which there are two kinds.

1. By the common law.
2. By statute.

Perjury, by the common law, seemeth to be a wilful false oath, by one who, being lawfully required to depose the truth in any proceeding in a course of justice, swears absolutely in a matter of some consequence to the point in question, whether he be believed or not.

Com. Dig. tit.  
Jus. of Peace,  
b. 102.

For the better understanding whereof, I shall consider the following particulars:

1. How far this offence must be wilful.
2. In what kind of proceedings it may be committed.
3. In what cases an oath may be said to be so far lawfully administered, that he who takes it may become guilty of perjury.
4. In what kind of oaths perjury may be committed.
5. How far the oath must be false.
6. Whether the matter of the oath must be absolute.
7. How far things sworn ought to be material to the point in question.
8. How far the false oath must be credited.

As to the FIRST POINT, *viz.* How far this offence must be wilful.

*Sec. 2.* It seemeth that no one ought to be found guilty thereof without clear proof, that the false oath alleged against him was taken with some degree of deliberation; for if, upon the whole circumstances of the case, it shall appear probable, that it was owing rather to the weakness than perverseness of the party, as where it was occasioned by surprise, or inadvertency, or a mistake of the true state of the question, it cannot but be hard to make it amount to voluntary and corrupt perjury, which is of all crimes whatsoever the most infamous and detestable.

5 Mod. 350.  
10 Mod. 195.  
Salkeld, 513.  
3 Inst. 163.  
Loft, 775.



As to the SECOND POINT, *viz.* In what kind of proceedings this offence may be committed.

C. Eliz. 168,  
169.  
Noy, 128.  
2 R. Abr. 237.  
Hobart, 62.

(a) C. Eliz. 907.  
Skinner, 327.  
1 Sid. 418.  
1 R. Abr. 40.  
5 Mod. 348.  
(b) C. Eliz.  
185. 609.  
2 Roll. 410.  
1 R. Abr. 40.  
1 Leon. 131.  
Com. Dy. 243.  
(c) 2 R. Abr.  
257.  
1 R. Abr. 41.  
Winch. 3.  
5 Mod. 348.  
Hutt. 34.  
1 Mod. 55.  
Yelv. 27.  
C. Eliz. 297.  
342. 348. 905.  
(d) 12 Co. 101.  
C. Jac. 212.  
Com. C. Jac.  
120.  
3 Inst. 164.  
Vide sect. 18.  
(e) 1 R. Abr.  
39.

*Sect. 3.* It seems to be clearly agreed, that all such false oaths as are taken before those who are any ways intrusted with the administration of public justice, in relation to any matter before them in debate, are properly perjuries; and it seems to have been holden by some, that all such false oaths as are taken before persons authorized by the king to examine witnesses in relation to any matter whatsoever, wherein his honour or interest are concerned, are also punishable as perjuries. And surely there can be no offence of this nature which will not justly deserve a public prosecution, inasmuch as if it should once prevail, it would make it impossible to have any law whatsoever duly executed, and expose the lives, liberties, and properties, of the most innocent to the mercy of the greatest villains. And therefore it hath been holden, that not only such persons are indictable for perjury, who take a false oath in a court of record, upon an issue therein joined, but also all those who forswear themselves in a matter judicially depending before any court of (a) equity, or spiritual (b) court, or any other (c) lawful court, whether the proceedings therein be of record or not (d), or whether they concern the interest of the king or subject. And it is said to be no way material, whether such false oath be taken in the face of a court, or persons authorized by it to examine a matter, the knowledge whereof is necessary for the right determination of a cause; and (e) therefore, that a false oath before a sheriff, upon a writ of inquiry of damages, is as much punishable as if it were taken before the court on trial of the cause.

(f) C. C. r.  
146.

(g) 2 Roll. 410.  
2 R. Abr. 77.

(h) Noy, 100.  
Moor, 627.

(i) Hobart, 62.

Also it seemeth, that any false oath is punishable as perjury, which tends to mislead the Court in any of their proceedings relating to a matter judicially before them, though it no way affect the principal judgment which is to be given in the cause; as where (f) a person who offers himself to be bail for another knowingly and wilfully swears that his substance is greater than it is. Also it hath been resolved, that not only such oaths as are taken upon judicial proceedings, but also all such as any way tend to abuse the administration of justice, are properly perjuries; as where one (g) takes a false oath before a justice of peace, in order to induce him to compel another to find sureties for the peace, &c. or where a person forswears himself (h) before commissioners appointed by the king to inquire of the forfeitures of his tenants' estates, &c. whereby he makes them liable to be seized by exchequer process. Also it hath been said, that a false oath is punishable as perjury, in some cases, wherein the king's honour or interest is concerned, though it do not concern the administration of justice; as where one swears a false oath concerning the possession of lands, before commissioners appointed by the king to inquire of such persons whose titles to the lands in their possession are defective, and want the supply of the king's patents: and this is certainly an offence of a very heinous nature (i), tending not only to frustrate the king's gracious purpose, but to abuse his goodness by inducing him to grant his patents to those

those who are out of possession, and no way within the intent of the commission, which instead of quieting the possessions of the subjects, cannot but end in the greatest disturbance of them.

However it seemeth certain, that no oath whatsoever in a mere private matter, howsoever wilful or malicious it may be, is punishable as perjury in a criminal prosecution; for private injuries are left to be redressed by private actions; and upon this ground it hath been holden, that a false oath taken by one upon the making of a bargain, that the thing sold is his own, is not punishable as perjury. Also from what hath been said it appears, that the notion of perjury is confined to such public oaths only as affirm or deny some matter of fact, contrary to the knowledge of the party; and, therefore, that it doth not extend to any promissory oaths whatsoever; from which it clearly follows, that no officer, public or private, who neglects to execute his office in pursuance of his oath, or acts contrary to the purport of it, is indictable for perjury in respect of such oath; yet it is certain, that his offence is highly aggravated by being contrary to his oath, and therefore, that he is liable to the severer fine on that account.

Con. 1 Ven.  
369, 370.  
3 H. Abr. 257.  
2 R. Abr. 257.  
3 Inst. 106

As to the THIRD POINT, *viz.* In what cases an oath may be said to be so far lawfully administered, that he who takes it may become guilty of perjury by swearing falsely.

*Sect. 4.* It seemeth clear, that no oath whatsoever taken before (a) persons acting merely in a private (b) capacity, or (c) before those who take upon them to administer oaths of a public nature, without legal authority for their so doing, or (d) before those who are legally authorized to administer some kinds of oaths, but not those which happen to be taken before them, or even (e) before those who take upon them to administer justice by virtue of an authority seemingly colourable, but in truth unwarranted and merely void, can ever amount to perjuries in the eye of the law, because they are of no manner of force, but are altogether idle.

(a) 2 R. Abr.  
257.  
3 Inst. 165.  
Yelv. 72.  
(b) Cro. El. 169.  
(c) 1 Sid. 274.  
2 R. Abr. 257.  
Latch. 38. 132.  
(d) Yelv. 111.  
3 Inst. 166.  
See 4 Inst. 97.  
29 Car. 2. 25.  
2 Roll. 427.  
4 Inst. 278.  
See Dougl. 156.  
(e) Sid. 118.

And from the same ground it seemeth also clearly to follow, that no false oath in an affidavit made before persons falsely pretending to be authorized by a court of justice to take affidavits in relation to matters depending before such court, can properly be called perjury, because no affidavit is any way regarded, unless it be made before persons legally intrusted with a power to take it, as being both of sufficient ability to ask all proper questions of the party who shall make such affidavit, and also of such integrity as not to suffer any thing to be inserted therein, to the truth whereof the party hath not sworn. And though it may be said, that an affidavit taken before persons falsely pretending to be commissioned for such purpose by the courts of justice, doth directly tend to impose upon such courts, and may possibly happen through surprize to be read, and may also in its own nature be altogether as heinous as if it had been made before persons regularly empowered to take it; yet inasmuch as it is of itself of no manner of validity, and is no otherwise regarded, than as it hath the appearance of being sworn before persons legally commis-

4 Comm. 137.  
3 Inst. 165.

sioned

sioned, without which it would have no manner of credit, it seemeth that offences of this nature are most properly punished by severely chastising those who usurp such an authority of administering of oaths without any legal warrant.

However, it hath been adjudged, that a false oath taken before persons, who, having been commissioned to examine witnesses, happen to proceed after the demise of the king who gave them their commission, and before notice thereof, may be punished as perjury; for it would be of the most ill consequence to make such proceedings void; and therefore, though all such commissions be in strictness legally determined by the demise of the king who gave them, without any notice; yet for the necessity of the case, whatever is done under them before such notice, must be suffered to stand good; for otherwise the most innocent and most deserving subjects would be unavoidably exposed to numberless prosecutions for doing their duties, without any colour of a fault. And *Quare*, Whether a perjury in a court whose proceedings are afterwards reversed by error, may not still be punished as perjury, notwithstanding such reversal (1).

As to the FOURTH POINT, *viz.* In what kind of oaths perjury may be committed.

*Sect. 5.* It seemeth clear, that a man may be in danger of being guilty thereof, not only in respect of a false oath taken by him as a witness for another, but also in respect of a false oath taken by him in his own cause, either in an answer to questions put to him in a court of (a) law or (b) equity, having power to purge him upon oath concerning his knowledge of the matters in dispute, or in his (c) affidavit concerning some collateral matter, wherein the parties own oaths are allowed to be taken. (2) But it seems, that a juror who gives a verdict contrary to manifest evidence, is not properly guilty of perjury within the abovementioned description, because he is not sworn to depose the truth, but only to give a true judgment upon the deposition of others, and in many cases is not punishable at all *in foro humano*, as shall be set forth more at large under the head of Conspiracy.

As

(1) In the case of the King v. Alford, Sumner assizes for Somerset, 1776, the defendant was indicted for perjury in a cause tried at the assizes before Mr. Justice Willes. The caption of the indictment recited the names of the Judges who were in the commission, and charged, "That at the said trial, before the Hon. Edward Willes, one of the Justices aforesaid, the defendant took his corporal oath, &c. he the said Edward Willes then and there having competent authority to administer an oath to the defendant in that behalf," the prisoner was found guilty. But Mr. Baron Eyre, who tried the cause, doubted of the authority of one commissioner to administer the oath: the record of *nisi prius*, which was read in evidence, stating, in the usual form, that the trial was before both the Judges; and therefore another doubt arose whether the evidence maintained the indictment. On reference, the first Hilary Term 1777, the Judges were unanimous, that either of the Judges may administer the oath, consequently there was no vari-

ance, and the conviction good. Cases in Cro. La. 137.

(2) By stat. 3 G. 4. c. 81. s. 6. by which it is recited, that doubts have been suggested, whether any person who wilfully and corruptly swears falsely in an affidavit made before a Master in Chancery in any matter of bankruptcy, is liable to the pains and penalties now by law inflicted for this offence of wilful and corrupt perjury, and which doubts ought to be removed; it is therefore further declared and enacted, "That every such offender is liable to such pains and penalties; and that if any person at any time hereafter shall wilfully and corruptly swear falsely in any affidavit or deposition (or, being of the people called Quakers, shall wilfully and corruptly affirm falsely), before any Master in Chancery in ordinary or extraordinary in any matter of bankruptcy, such person, being convicted thereof by indictment or information, shall be liable to suffer the pains and penalties now in force against wilful and corrupt perjury."

As to the FIFTH POINT, viz. How far the matter of the oath which may amount to perjury must be false.

Sect. 6. It (a) is said not to be material whether the fact which is sworn be in itself true or false; for howsoever the thing sworn may happen to prove agreeable to the truth, yet if it were not known to be so by him who swears to it, his offence is altogether as great as if it had been false, inasmuch as he wilfully swears, that he knows a thing to be true, which at the same time he knows nothing of, and impudently endeavours to induce those before whom he swears to proceed upon the credit of a deposition, which any stranger might make as well as he.

(a) Palm. 294.  
Holt y. 37.  
2 R. Abr. 77  
3 Inst. 166.  
Con.  
3 Mod. 222.

As to the SIXTH POINT, viz. How far the oath must be absolute.

Sect. 7. It is said, that no oath shall amount to perjury unless it be sworn absolutely and directly; and therefore, that he who swears a thing according as he thinks, remembers, or believes, cannot in respect of such an oath be found guilty of perjury. (3)

3 Inst. 166.

As to the SEVENTH POINT, viz. How far the thing sworn ought to be material to the point in question.

Sect. 8. It seemeth clear, that if the oath for which a man is indicted of perjury be wholly foreign from the purpose, or altogether immaterial, and neither any way pertinent to the matter in question, not tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the substantial part of the evidence, it cannot amount to perjury, because it is merely idle and insignificant: as if upon a trial, in which the question is whether such a one was *compus* or not, a witness introduces his evidence by giving a history of a journey which he took to see the party, and happens to swear falsely in relation to some of the circumstances of the journey. Also it hath been adjudged, that where a witness being asked by a Judge whether A. brought a certain number of sheep from one town to another all together, answered, that he did so, where in truth A. did not bring them all together, but part at one time and part at another, yet such witness was not guilty of perjury, because the substance of the question was, whether A. did bring them at all or not, and that the manner of bringing them was only a circumstance. And upon the same ground it is said to have been adjudged, that where a witness being asked, whether such a sum of money were paid for two things in controversy between the parties, answered, that it was, where in truth it was paid only for one of them by agreement, such witness ought not to be punished for perjury; because as the case was, it was no way material whether it were paid for one or both. Also it is said to have been resolved, that a witness who

1 Freem. 506.  
1 Sid. 274.  
Vide inf. s. 22.  
Alecyn, 79.  
1 R. Abr. 141.  
78.  
C. Eliz. 500.  
Salkeld, 514.  
Nov. 36.  
2 Roll. 145.  
C. Car. 521.  
Hobart, 53.  
Carth. 422.  
5 Mod. 315.  
348.  
3 Inst. 164.

2 Roll. 41. 369.

2 Roll. 42.

swore

(3) In *Miller's Case*, 3 Wils. 427. 2 Bl. Rep. 881, Lord Chief Justice De Grey said, it was a mistake mankind had fallen into, that a person cannot be convicted of perjury, who swears that he thinks or believes a fact to be true, for that he certainly may, and it only renders the proof of it more difficult. And in the case of the *King v. Pedley*, B. R. Trin. Term, 1784, this opinion was

confirmed by Lord Mansfield. Cases in Crown Law, 269. This question was also agitated in the Common Pleas, Mich. Term, 1780, by Mr. Serjeant Walker, when Lord Loughborough and all the other Judges were unanimous, that belief was to be considered as an absolute term, and that an indictment might be supported upon it.

Hedley, 97.

swore that one drew his dagger and beat and wounded J. S. where in truth he beat him with a staff, was not guilty of perjury, because the beating only was material.

But perhaps in all these cases it ought to be intended, that the question was put in such a manner, that the witness might reasonably apprehend that the sole design of putting it was to be informed of the substantial part of it, which might induce him through inadvertency to take no notice of the circumstantial part, and give a general answer to the substantial; for otherwise, if it appear plainly, that the scope of the question was to sift him as to his knowledge of the substance, by examining him strictly concerning the circumstances, and he give a particular and distinct account of the circumstances, which afterwards appear to be false; surely he cannot but be guilty of perjury, inasmuch as nothing can be more apt to incline a jury to give credit to the substantial part of a man's evidence, than his appearing to have an exact and particular knowledge of all the circumstances relating to it. And upon these grounds I cannot but think the opinion of those Judges very reasonable, who held that a witness was guilty of perjury, who in an action of trespass for breaking the plaintiff's close, and spoiling it with sheep, deposed that he saw thirty or forty sheep in the said close, and that he knew them to be the defendant's, because they were marked with such a mark, which he knew to be the defendant's mark, where in truth the defendant never used such a mark; for the giving such a special reason for his remembrance could not but make his testimony more credible than it would have been without it; and though it signified nothing to the merits of the cause, whether the sheep had any mark at all or not, yet inasmuch as the assigning such a circumstance in a thing immaterial had such a direct tendency to corroborate the evidence concerning what was most material, and consequently was equally prejudicial to the party, and equally criminal in its own nature, and equally tending to abuse the administration of justice, as if the matter sworn had been the very point in issue, there doth not seem to be any reason why it should not be equally punishable. But I cannot find this matter any where thoroughly settled or debated, and therefore shall leave it to every man's own judgment, which, from the consideration of the circumstances of each particular case, may generally, without any great difficulty, discern whether the matter in which perjury is assigned, were wholly impertinent, idle, and insignificant, or not, which seems to be the best rule for determining whether it be punishable as perjury or not.

2 Roll 368.  
Palme 362.

Lucas, 195

1 Siderfin, 274.

But it is said in Siderfin, speaking, as I suppose, of an answer in chancery, that a man may be guilty of perjury at the common law by swearing a thing not material. But surely this ought not to be understood in so great a latitude, as if it were meant that every falsity in such an answer must needs be perjury, howsoever foreign, circumstantial, and trivial the point wherein it is assigned may be, which is directly contrary to what seems to be clearly taken for granted in other books. And therefore, perhaps, where

where it is said that a man may be guilty of perjury in a thing not material, no more may be meant, but that he may be as well guilty thereof by answering to a matter not charged in the bill, as by answering to the matters therein contained, which may alone be said to be material, because the defendant is not obliged in his answer to take notice of any thing else. Or else, perhaps, the meaning may be, that in a prosecution for perjury at common law, setting forth a false oath in such an answer relating to the thing said to be in variance, the falsity shall be intended *prima facie* to have been some way material in the cause, unless the contrary be proved by the other side: whereas in all prosecutions upon the statute, it is necessary expressly to shew in what manner the false oath is material to the cause in question, because that statute, extending only to such perjuries whereby some person is grieved, cannot maintain a prosecution which does not bring the case within the purview of it, by shewing that some one was grieved by the injury complained of, which he could not be, unless the thing sworn were somehow material. However, it seemeth to be clear, that a man may as well be guilty of perjury by a false oath tending to extenuate or aggravate the damages, as by an oath which is direct to the fact in issue. (4)

Vide inf. s. 23.

C. J. 112.  
12 C. 101.  
2 Leon. 128

As to the EIGHTH POINT, *viz.* How far the false oath must be credited.

Sect. 9. It hath been holden not to be material upon an indictment of perjury at common law, whether the false oath were at all credited, (5) or whether the party in whose prejudice it was intended, were in the event any way aggrieved by it or not, inasmuch as this is not a prosecution grounded on the damage to the party, but on the abuse of public justice.

3 Leon. 230.  
2 Leon. 211.

SUBORNATION of perjury, by the common law seems to be an offence in procuring a man to take a false oath amounting to perjury, who actually takes such oath.

1 R. Abr. 41.  
57. 79.  
Yelv. 72.  
C. Jac. s. 58.  
C. Car. 357.

Sect. 10. But it seemeth clear, that if the person incited to take such an oath do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury; yet it is certain that he is liable to be punished, not only by fine, but also by infamous corporal punishment.

2 Keb. 389.  
3 Mod. 122.  
Foresk. 101.

Thus far of perjury, and subornation of perjury, by the common law.

And now I shall proceed to examine in what manner these offences are restrained by statute.

Of perjury by  
5 Eliz. c. 9.

Sect.

(4) It is not necessary that it appear to what degree the point in which a man is perjured was material to the issue; for if it is but circumstantially material, it will be perjury. *Ld. Raymond*, 258. Much less is it necessary that the evidence be sufficient for the plaintiff to recover upon; for in the nature of the thing an evidence may be very material, and yet it may not be full enough to prove directly the point in question. *Ld. Raymond*, 889. And it is incumbent on the prosecutor to prove the materiality of the perjury.

(5) But on the trial the oath will be taken as true, until it be disapproved; and therefore to convict a man of perjury, a probable, credible witness is not enough; for the evidence must be strong, clear, and more numerous on the part of the prosecution than the evidence on the other side. Therefore the law will not permit a man to be convicted of perjury, unless there are two witnesses at least. *Haylock's case*, O. B. 1786. 10 Mod. 195. Nor shall the party prejudiced by the perjury be admitted as a witness to prove it. *L. Raymond*, 396.

See the case  
Rex v. Thoroughgood, 1  
Mod. 172.

*Sect. 11.* As to which it is to be observed, that it is enacted by 5 Eliz. c. 9. "That whoever shall unlawfully and corruptly procure any witness or witnesses by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause whatsoever, depending in suit and variance, by any writ, action, bill, complaint, or information, in any wise concerning any lands, tenements, or hereditaments, or goods, chattels, debts or damages, in any of the king's courts of Chancery, Whitehall, or elsewhere, within any of the king's dominions of England or Wales, or the marches of the same, where any person or persons shall have authority by virtue of the king's commission, patent or writ, to hold plea of land, or to examine, hear, or determine, any title of lands, or any matter or witnesses concerning the title, right, or interests of any lands or tenements, or hereditaments, or in any of the king's courts of record, or in any leet view or frank pledge or law-day, ancient demesne-court, hundred-court, court-baron, or in the court or courts of Stannary in the counties of Devon or Cornwall, or shall unlawfully and corruptly procure or suborn any witness or witnesses, who shall be sworn to testify *in perpetuam rei memoriam*, shall for such offence, being thereof lawfully convicted or attainted, forfeit the sum of forty pounds."

By 5 Eliz. c. 9. "If any such offender so being convicted or attainted shall not have any goods or chattels, lands or tenements, to the value of forty pounds, that then every such person shall suffer imprisonment by the space of one half year without bail or mainprise, and stand upon the pillory the space of one whole hour, in some market-town next adjoining to the place where the offence was committed, in open market there, or in the market-town itself where the offence was committed."

See 1 Sid. 216.

*Sect. 12.* By 5 Eliz. c. 9. s. 5. "No person being so convicted or attainted shall from thenceforth be received as a witness in any court of record, in any of the king's dominions of England, Wales, or the marches of the same, till such judgment against him shall be reversed by attain, or otherwise; and that upon every such reversal the party grieved shall recover damages against the party who did procure the said judgment so reversed to be first given, &c."

*Sect. 13.* By 5 Eliz. c. 9. s. 6. "If any person or persons shall either by the subornation, unlawful procurement, sinister persuasion, or means of any other, or by their own act, consent, or agreement, wilfully and corruptly commit any manner of wilful perjury, by his or their deposition, in any of the courts before mentioned, or being examined *ad perpetuam rei memoriam*, that then every such offender, being duly convicted or attainted, shall forfeit twenty pounds, and have imprisonment by the space of six months without bail or mainprise; and the oath of such an offender shall not from thenceforth be received in any court of record in England or Wales, until such judgment

“ment shall be reversed, &c. on which reversal the party grieved shall recover damages in the manner before mentioned.”

By 5 Eliz. c. 9. s. 7. “If such offender shall not have goods or chattels to the value of twenty pounds, that then such person shall be set on the pillory in some market-place within the shire, city, or borough, where the offence shall be committed, by the sheriff or his ministers, if it shall fortune to be without any city or town corporate, and if it happen to be within any such city or town corporate, then by the head officer of such city, &c. where he shall have both ears nailed, &c.”

Sect. 14. By 5 Eliz. c. 9. s. 8, 9. “One moiety of the said forfeiture shall be to the king, and the other moiety to such person as shall be grieved, hindered, or molested, by reason of any of the offences before mentioned, that will sue for the same, &c. and that as well the Judge and Judges of every such of the said courts where any such suits shall be, and whereupon any such perjury shall be committed, as also the Justices of assize and gaol delivery, and justices of the peace at their quarter sessions, (6) both within the liberties and without, may inquire of, hear, and determine all offences against the said act.”

Sect. 15. But by 5 Eliz. c. 9. s. 11. it is provided, “That the said act shall no way extend to any spiritual or ecclesiastical court, but that every such offender as shall offend in form as aforesaid, shall be punished by such usual and ordinary laws as are used in the said courts.”

Sect. 16. By 5 Eliz. c. 9. s. 13. it is also provided, “That the said statute shall not restrain the authority of any Judge, having absolute power to punish perjury before the making thereof, but that every such Judge may proceed in the punishment of all offences, punishable before the making of the said statute, in such wise as they might have done, and used to do, to all purposes, so that they set not upon the offender less punishment than is contained in the said act.” From whence it seemeth undoubtedly to follow, that the court of King’s Bench, &c. proceeding upon an indictment, or information of perjury, or subornation of perjury at common law, may not only set a discretionary fine on the offender, but also condemn him to the pillory, without making any inquiry concerning the value of his land or goods.

† And by 2 Geo. 2. c. 25. made perpetual by 9 Geo. 2. c. 8. “Besides the punishment already to be inflicted by law for so great crimes, it shall be lawful for the Court or Judge before whom any person shall be convicted of wilful and corrupt perjury, or subornation of perjury, according to the laws now in being, to order such person to be sent to some house of correction within the same county, for a time not exceeding seven years, there to be kept to hard labour during all the said

Offenders may be transported. Vide infra, sect. 29. for the punishment of persons convicted of perjury, &c. acting as attornies.

(6) Prosecutions upon this statute being more difficult than by indictment at common law, are very seldom brought, especially at the sessions; and at common law justices of the peace have no juris-

isdiction over the offence. 2 Hawk. c. 8. s. 38. Strange, 1088.—The safer and most usual mode therefore is by indictment at the assizes, or in the King’s Bench. 3 Burn, 294.



“said time; or otherwise to be transported for a term not exceeding seven years, as the Court shall think most proper.”

But for the better understanding of the other parts of this statute, I shall consider the following particulars:

1. How far the very words of the statute must be pursued in a prosecution grounded thereon.

2. In what kind of oaths one may incur the danger thereof.

3. How far the false oath must appear to have been prejudicial to some person.

As to the first of these particulars, *viz.* How far the very words of the statute must be pursued.

2 Leon. 211.  
214.  
Shower, 190.  
C. El. 105. 147.  
Savil, 43.

3. Leon. 230.  
Hetley, 12.  
Holt, 534.  
Skinner, 403.

See Cox's case,  
Cases Cro.  
Law, 65.

*Sect. 17.* It hath been holden, that in every prosecution on this statute, the words thereof must be exactly pursued, and therefore that an indictment or action on the said statute, alleging that the defendant deposed such a matter *falsò et deceptivè*, or *falsò et corruptè*, or *falsò et voluntariè*, without expressly saying that he did it *voluntariè et corruptè*, is not good; and that such a defect cannot be supplied by adding the words *contra formum statuti*, or concluding *et sic voluntarium et corruptum commisit perjurium*. Also it hath been holden, that it is necessary expressly to allege that the defendant was sworn, and therefore that it is not sufficient to say, that *tacto per se sacro evangelio falsò deposuit*.

5 Bulst. 117.

*Sect. 18.* However, it hath been resolved, that it is not necessary to shew whether the party, who is accused of perjury, did take the false oath through the subornation of another, or without any such subornation, notwithstanding the words of the statute are, “If any person either by the subornation, unlawful procurement, sinister persuasion, or means of any other, or by their own act, consent, or agreement, commit wilful perjury, &c.” for inasmuch as there is no medium between the two branches of this distinction, so that all perjury whatsoever must needs come within one of them, and it is no way material under which of them it doth come, it is a reasonable exposition to look on the said words as put in the statute *ex abundanti*, seeing they express no more than the law must needs have implied without them; from whence it follows, that they operate no more than if they had not been expressed, and consequently shall not oblige the prosecutor necessarily to pursue them, which would put him under the difficulty not only of proving the perjury, which alone is material, but also of shewing it to be within one of the branches of the said distinction, which is nothing to the purpose.

As to the second of the abovementioned particulars, *viz.* In what kind of oaths one may incur the danger of this statute.

*Sect. 19.* It hath been resolved, that no one can be guilty of perjury within the meaning thereof, in any case wherein a man may not possibly be guilty also of subornation of perjury within the same statute; for it is very reasonable to give the whole statute the same construction; nor can it well be intended, that the makers

makers thereof, who expressly inflict a greater penalty on subornation of perjury than on the perjury itself, should mean to extend the purview of the law in relation to what they esteemed the lesser crime, farther than in relation to that which they esteemed the greater; from whence it hath been argued and determined, that because that part of the statute which concerns subornation of perjury extends only to subornation of perjury in "matters depending in suit by writ, action, bill, plaint, or information, in anywise concerning lands, tenements, or hereditaments, or goods, chattels, debts, or damages, &c." therefore the following clause concerning perjury itself, though it be penned in more general words, shall come under the same restriction. And from hence it clearly follows, that no perjury upon an indictment or criminal information can bring a man within the danger of the statute, because they are omitted in the above mentioned clause. Also upon this ground it seems easy to account for the judgment in Price's case, who being indicted for a perjury supposed to be committed by him in an information for the king, which as I suppose must be intended to have been a criminal one, was discharged upon an exception taken to the indictment; but if the information whereon the said perjury was supposed to have been committed, had been of a civil nature, I do not see any reason why it should not be as well within the meaning as it seems to be expressly within the words of the statute; for surely the opinion that the king cannot by indictment, which is his own proper suit, punish his own witness, who swears for him, cannot be agreeable to law; because however the perjury of such a witness may seem to tend to promote the king's interest in relation to the cause which happens to be in dispute, yet certainly it is as heinous a crime in its own nature, and as much an abuse to justice, and of the same ill consequence to the public, and consequently as worthy of the king's resentment, as if it had been taken against him.

*Sect. 20.* Also it hath been resolved, that this statute extends to no other perjury except that of a witness, not only because the clause concerning subornation, to which the subsequent clause concerning perjury has a reference, relates to perjury by witnesses only, but also because the clause concerning perjury mentions only perjury committed by persons in their examinations *ad perpetuam rei memoriam*, or else in their depositions in some of the courts above mentioned, which in common speech are taken for such oaths only as are taken by a witness; and from hence it follows, that no one can come within the statute by reason of any false oath in an (a) answer to a bill in Chancery, or in (b) swearing the peace against another, or in a (c) presentative made by him as homager of a court-baron, or by reason of a false (d) wager of law, or for taking a false oath before (e) commissioners appointed by the king to make an enquiry concerning his title to certain lands.

*Sect. 21.* Also it hath been said, that he who makes a false affidavit against a man in a court of justice is not within this statute.

5 Co. 99.

C. Jac. 120.

3 Inst. 161.

But he is punishable for the same by indictment at common law, Bur. Mansf. 1189.

(a) C. Eliz. 148.

2 Leon. 201.

Dalison, 84.

Yelv. 120.

(b) 2 R. Abr.

77.

(c) 2 Leon. 201.

(d) 1 Noy, 7.

108.

Finch, 450.

(e) Moor, 627.

2 R. Abr. 77.

1 Roll. 79.

3 Keble, 345.

statute. (7) But perhaps the books wherein this opinion is holden ought to be intended only of such affidavit which no way relate to a cause depending in suit before such court; for if they be of such a nature, that either of the parties in variance be grieved, hindered, or molested in respect of their cause in such court by reason of the perjury; as where a trial is put off, or a judgment or execution set aside upon a false affidavit; the offence seems to be not only meaning within the statute, but also within the very letter of it, unless the words "witnesses" and "depositions" are confined to so strict a signification as to bear no kind of application to any other person or oaths, except those which are made use of upon the trial of the issue in question, for which I cannot find any good authority.

Vide 2 Leon.  
40.  
1 R. Ab. 30, 42

Obs. on the Stat.  
71.

However, partly perhaps from this notion, and partly because the statute speaks expressly only of depositions in the courts abovementioned, it hath been questioned, whether a false oath before a sheriff, upon a writ of inquiry of damages, be within the statute or not? But if it be considered, that the party to whose prejudice such a false oath is taken is as much aggrieved by it, as if it had been taken in the very court, and the principal judgment of the cause depends upon such an inquiry; and the depositions made before the sheriff may as properly be said to be depositions in the court by which the sheriff is commissioned to take the inquiry, as depositions taken before the justices of *nisi prius*, upon a trial of an issue joined in a superior court, which are undoubtedly within the meaning of the statute; and also inasmuch as those who give evidence before a sheriff upon such an inquiry may, in the common use of words, be as properly called witnesses, as those who give evidence before the court in which an issue is joined, it seemeth to be the more plausible opinion, that such a perjury is within the statute; but since it is disputable whether it be so or no, and it is certain that it is perjury at common law, and that in all cases whatsoever where a man takes a false oath, which is not perjury within the statute, but is looked on as a perjury at common law, he is still punishable for it by indictment or information at the common law, it is certainly most advisable to prosecute such an offender at common law, and not upon the statute.

See the authorities  
above cited.

C. Jac. 1.

As to the third particular, *viz.* How far the false oath must appear to have been prejudicial to some person.

1st. 167. Vide  
supra p. 440  
97. contra.

*Sect. 22.* It hath been collected from the above mentioned clause, which giveth an action to the party grieved by the offences mentioned in the statute, that no false oath is within the meaning thereof, which does not give some person a just cause of complaint. And upon this ground it hath been said, that he who swears a thing which is true, but not known by him to be so, is not within the statute; because howsoever heinous his offence may be in its own nature, yet, when it proves in the event to be in maintenance of the truth, it cannot be said to give him a just cause

(7) If a person make an affidavit in the Common Pleas, and afterwards confess it to be false; the court may record his confession, and sentence him

to the pillory: because any court may punish such an offence committed in *facie curie*, under this act of 5 Eliz. c. 9. *Rex v. Thorowgood*, 8 Mod. 179.

cause of complaint, who would take advantage against another from his want of legal evidence to make out the justice of his cause.

*Sect. 23.* Also from the same ground it seemeth clearly to follow, that no false oath can be within the statute, unless the party against whom it was sworn suffered some kind of disadvantage by it, for otherwise it cannot be said that any one was grieved, hindered, or molested by it; and therefore it is certain, that in every prosecution upon the statute, it is necessary to set forth the record of the cause wherein the perjury complained of is supposed to have been committed; and also to prove at the trial of the cause, that there is actually such a record, by producing the record itself, or a true copy thereof, which must agree with that which is set forth in the pleadings, without any material variance; for otherwise it cannot legally appear that there ever was such a suit depending, wherein the party might be prejudiced in the manner supposed. Also it seems to be agreed, that it is necessary not only to set forth the point wherein the false oath was assigned, but also to shew in what manner it conduced to the proof or disproof of the matter in debate between the parties. And it hath been adjudged, that an indictment setting forth a suit concerning the manor of Dale, and assigning a false oath concerning the "*numarium predictum innuendo*," is not good, because it no otherwise appears that the false oath did concern the manor of Dale, but by the *innuendo*, which is not a sufficient averment. Also upon the same ground, it seems to be safest in a prosecution upon the statute for a false oath in Chancery, to set forth the bill and answer, that the plaintiff may appear to have been aggrieved by it. And for the same reason it seemeth also, that you ought, in such a prosecution of a witness in Chancery, to set forth the interrogatory in particular, and to shew how it was material. Also it hath been resolved, that as in an action on the statute brought by one person, it must appear that the false oath was prejudicial to the plaintiff, so in an action by more than one, it must appear to have been prejudicial to every one of the plaintiffs. And it hath been said, that it is not sufficient to shew that the false oath caused the court to make an award against the plaintiff, unless it also appear that such an award was prejudicial to him; and therefore where the plaintiff at a trial in ejectment challenged a juror, and proved his challenge by a false oath, by reason whereof the inquest was not taken, and consequently the possession of the defendant, who had a defeasible title, continued longer than it otherwise would have done, it was adjudged, that such a defendant cannot have an action on the statute against such witness, because in truth he gained an advantage by the perjury. Also it hath been holden, that it is not sufficient to shew that the perjury, for which an action is brought upon the statute, was actually prejudicial to the plaintiff, unless it be also shewn to have been made in some cause which may properly be said to have been depending in suit between him and the person for whom the witness was examined; and therefore it hath been holden, that where A. brought a bill in Chancery against B., and the lord keeper, by an order, made C. to be as a party to the bill against

*Vide sup. s. 8.  
& 3 Inst. 167.*

*Co. Ent. 164.  
6 Mod. 168.  
2 Roll. 76.  
1 Keb. 452.  
935. 941.  
Raym. 202.  
2 Leon. 12.  
2 Roll. 427.  
C. Car. 351.  
352. 353.  
1 Keb. 452.  
C. Eliz. 425.*

*1 Keb. 935.  
941.*

*Sid. 106.*

*2 Leon. 12.  
3 Leon. 68.*

*2 Leon. 10.*

*Yelv.*

against B., and afterwards a commission went forth to examine witnesses between B. and C., upon which D., being produced as a witness on the part of C., swore directly for him against B., whereupon a decree was made against B., yet B. cannot have an action on the statute, because C. was not a party to the suit, but came in *à l'instance*, by an order; and it is said, that the words of the statute are, "where one is grieved by a deposition in a suit between party and party;" but perhaps the authority of this opinion may justly be questioned, not only because the words of the statute whereon it is grounded are mistaken, but also because the offence seems in truth to be both within the meaning and letter of the law, since thereby a person is grieved in respect of a cause depending in suit in a court mentioned in the statute: however there seems to be no doubt but that a perjury which only tends to increase or lessen the damages to be given to a plaintiff, is as much within the statute, as any perjury which goes directly to the point of the issue. Also it seemeth to be settled, that perjury in a cause wherein an erroneous judgment is given, is a good foundation of a prosecution upon the statute, while such judgment stands unreversed.

2 Leon. 198.  
1 Keb. 9.  
Raymond, 71.  
1 Sid. 148.  
2 Keb. 718.  
854.  
1 Keb. 531.

Quakers.

† Sect. 24. It is enacted by 8 Geo. 1. c. 6. "That if any person, making such affirmation or declaration as is appointed by that act, shall be lawfully convicted of wilful, false, and corrupt affirming or declaring any matter or thing, which, if sworn in the common or usual form, would have amounted to wilful and corrupt perjury; every person so offending shall incur and suffer such and the same pains, penalties, and forfeitures as are inflicted or enacted by the laws against persons convicted of wilful and corrupt perjury."

Probate of

Sect. 25. It is also enacted by 31 Geo. 2. c. 10. s. 24. "That whosoever shall willingly and knowingly take a false oath, or procure any person to take a false oath, to obtain the probate of any will or wills, or to obtain letters of administration in order to receive the payment of any wages, pay, or other allowances of money, or prize-money, due, or that were supposed to be due, to any officer, seaman, or other person intitled, or supposed to be intitled, to any wages, pay, or other allowances of money or prize-money, for service due on board of any ship or vessel of his majesty, &c. or the executor, administrator, wife, relation, or creditor, of any such officer or seaman, or other person who has really served, or was supposed to have served on board of any ship or vessel of his majesty, &c. shall be deemed guilty of felony, and suffer death without benefit of clergy." (8)

Vide p. 315 tit.  
"Falsely personating another."

By a variety of other statutes which are too numerous to particularize, in which oaths are directed to be taken, it is enacted in some, that a person falsely swearing "shall be guilty of perjury," and in others "suffer the pains and penalties of perjury."

Form of the indictment.

† Sect. 26. It is recited by 23 Geo. 2. c. 11. "Whereas by reason

(8) By 28 Geo. 2. c. 13. s. 14. for the relief of insolvent debtors. If any sheriff or other officer perjure himself in taking the oaths directed by the act, he shall forfeit £500.—And if the of-

fence be committed by a prisoner, or other person enabled and intending to take the benefit of the act, it is felony without clergy.

reason of difficulties attending prosecutions for perjury and subornation of perjury, those heinous crimes have frequently gone unpunished:" for remedy whereof it is enacted, "That in every information or indictment for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom the oath was taken, (averring such court, or person or persons, to have a competent authority to administer the same,) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned; without setting forth the bill, answer, (1) information, indictment, declaration, or any part of any record or proceeding, either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the court, or person or persons, before whom the perjury was committed."

† Sect. 27. It is also further enacted by par. 2. "That in every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, and without setting forth the commission or authority of the court, or person or persons, before whom the perjury was committed, or was agreed or promised to be committed." (2)

† Sect. 28. And the better to prevent great offenders from escaping punishment by reason of the expense attending such prosecutions, it is further enacted by par. 3. "That it shall and may be lawful to and for any of his majesty's justices of assize, or *nisi prius*, or general gaol-delivery, or of any of the great sessions of Wales, or of the counties palatine; and they are hereby authorized (sitting the court, or within twenty-four after) to direct any person examined as a witness upon any trial before him or them, to be prosecuted for the said offence of perjury, in case there shall appear to him or them a reasonable cause for such prosecution, and that it shall appear to him or them proper so to do; and to assign the party injured, or other person undertaking such prosecution, counsel, who shall, and are hereby required to do their duty without any fee, gratuity, or reward for the same." Such prosecution is also exempted from tax or duty and fees of court, and the clerk of the assize is ordered to give the prosecutor a certificate of the same, being directed, with the counsel's names, &c.

The court may order perjured witnesses to be prosecuted.

† Sect.

(1) In perjury in an answer in Chancery, it is not necessary to prove the identity of the person who swore the oath; it is sufficient if the handwriting be proved, and that the jurat was subscribed by the master as being sworn before him. *Rex v. Morris*, 2 Burr. 1189. See also *Rex v. James*, 1 Show. 397. and *Rex v. Brady*, Cases Cro. Law. 49. notes.

(2) In general the court will oblige the defendant to plead or to demur to even a defective indictment for this offence. 2 Hawk. c. 25. s. 146.

They are also very cautious in granting a *certiorari* to remove it. 2 Hawk. c. 27. s. 28. And Lord Thurlow refused permission to amend an answer, where an indictment for perjury had only been threatened, even where the party, having no interest, could not be supposed to make the false oath intentionally. *Brown's Cases in Chancery*, 419. For it is the province of the grand jury to judge of the intention. *Vaux v. Lord Waltham*. And what the grand jury may find the court will never expunge. B. R. H. 203.

Attornies.

† *Sect. 29.* And it is enacted by 12 Geo. 1. c. 29. s. 4. "That if any person who hath been, or shall be convicted of wilful and corrupt perjury, or subornation of perjury, (3) shall act or practise as an attorney or solicitor, or agent in any suit or action, in any court of law, or equity, in England, the judge or judges of the court where such suit or action is or shall be brought, shall, upon complaint or information thereof, examine the matter in a summary way (a) in open court, and if it shall appear to the satisfaction of such judge or judges, that the party hath offended contrary to this act, such judge or judges shall cause such offender to be transported for seven years."

(a) Vide 2 Bar.  
K. B. 34.

### 5. Of Conspiracy.

For the better understanding the nature of conspiracy, I shall consider,

1. Who may be said to be guilty of conspiracy.

2. In what manner such offenders are to be punished.

As to the FIRST POINT, *viz.* Who may be said to be guilty of conspiracy.

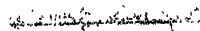
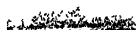
2 Inst. 562.  
Reg. 131. a.  
135.  
Godb. 444.  
See 2 Vol. of  
Reeves' Hist. of  
English Law,  
239.

*Sect. 1.* There can be no better rule than the statute of 33 or rather 21 Edw. 1. the intent whereof was to make a final definition of conspirators, to which purpose it declareth, "that conspirators be they that do confeder or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously to indict, or cause to indict, or falsely to move and maintain pleas; and also such as cause children within age to appeal men of felony, whereby they are imprisoned and sore grieved; and such as retain men in the country with liveries or fees for to maintain their malicious enterprizes; and this extendeth as well to the takers as to the givers; and to stewards and bailiffs of great lords, who by their signory, office, or power, undertake to bear or maintain quarrels, pleas, or debates that concern other parties than such as touch the estate of their lords or themselves."

Ld. Ray. 1169.  
3 Mod. 321.  
Burr. 930, 991.  
1 Com. 570.

*Sect. 2.* From this definition of conspirators it seems clearly to follow, that not only those who actually cause an innocent man to be indicted, and also to be tried upon the indictment whereupon he is lawfully acquitted, are properly conspirators, but that those also are guilty of this offence, who barely conspire to indict a man falsely and maliciously, whether they do any act in prosecution of such conspiracy or not; for the words of the statute seem expressly to include all such confederacies under the notion of conspiracy, whether there be any prosecution thereof or not. And if such a confederacy be within the letter of the statute, there seems to be no manner of reason to say, that they are not also within the meaning of it, since it is a high contempt of the law, barely to engage in such an association to abuse it, to serve the purposes of oppression and injustice. Neither can it

(3) Or of forgery or common barratry.



it be a severe construction which will bring a crime, so evidently contrary to the first principles of common honesty, within the meaning of a law, the words whereof do plainly seem to extend to it.

And therefore I cannot but question the accuracy of that description of conspiracy which is given in the Third Institute, (a) whereby the lawful acquittal of the party grieved is required to make the offenders guilty of this crime. It is true indeed, that a bare conspiracy to indict a man will not maintain a writ of conspiracy at the suit of the party grieved, because it doth not to him any actual damage. Also it must be confessed, that it is often laid down as a general rule, and taken for granted, that no such conspiracy is a good foundation for such a writ, unless the plaintiff be lawfully acquitted. And it is certain, that there is no formed writ of conspiracy in the Register for a malicious indictment or appeal, but what supposes such indictment or appeal to have been actually brought, and the party to have been legally discharged. From whence it follows, that no one can have the benefit of any such writ in the Register, who, upon a false accusation, is put to the trouble and vexation of being apprehended, examined, or committed, &c. without being ever indicted or appealed.

However, it is certain, that an acquittal by verdict is not always necessary to maintain such a writ; for it appears by the Register itself, that where one brought such a writ in the usual form, having in it the words *quousque acquietatus fuisset*, &c. against one who had been nonsuited in a malicious appeal of felony brought against him, his writ was abated, because such a nonsuit would not make good the words *quousque acquietatus fuisset*, and yet he afterwards brought a new writ, wherein he used the words *quietus recessit*, instead of *acquietatus fuisset*, and recovered. And why may not a new writ as well be formed in any other case which is as much within the mischief of the statute as this? Or what colour can there be to say, that the malicious putting of a man to the unreasonable charge, scandal, and trouble of a criminal prosecution, which is so palpably groundless as not to have probability enough to induce a grand jury to find an indictment, should not be as good a foundation of complaint, and a grievance as much within the meaning of the statute, as the putting one to the charge and vexation of a groundless action, either in a temporal or spiritual court, for which it appears by the (b) Register that a writ of conspiracy doth lie, without making use either of the words *acquietatus fuisset*, or *quietus recessit*? Neither can it be said, that the opinion I contend for is wholly unsupported by authority, as appears from the Poulterer's case in (c) Coke's Ninth Report.

However, since it is certain that an (d) action on the case in the nature of such writ doth lie for a false and malicious prosecution, for any crime, whether capital or not capital, though it

(a) 3 Inst. 174.  
1st. Ray. 378.  
10 Mod. 219.  
F. N. B. 114.  
1 Dan. Abr.  
211 213.  
S. P. C. 173,  
174, 175.  
B. Corone, 69.  
B. Appeal, 68.  
1 R. Abr. 110,  
111, 114.  
9 Co. 56, 57.  
Register, 134.  
1 Jon. 93, 94.  
Salkeld, 21.  
6 Mod. 261.  
Bull. N. P. 14.  
10 Mod. 219.  
B. Corone, 6.  
33 Il. 6. 1.  
See S. P. C. 174.  
Vide 2 Inst.  
407. 562.  
1 Ventris, 47.

(b) Regist. 134.  
F. N. B. 116.  
Finch, 306.  
2 Inst. 562.  
3 Keb. 254.  
(c) 9 Co. 56.

(d) 1 Jon. 93.  
94. See 3 Burr.  
1971.  
3 Bl. Com. 126.  
1 Leon. 107.  
C. Eliz. 70. 134.

Palm. 315. C. Jac. 130. 357. 490. Latch, 79. C. Car. 15. 2 Roll. 256. 237. 2 Bulst. 270, 271.  
1 Roll. 109. 1 R. Abr. 112. 213. Ray. 135. 180. Con. 1 Bulst. 185. Yelv. 116. Hutt. 49. C.  
Eliz. 536. 9 Co. 57. 563. 5 Mod. 394. 405. 1 Salk. 13. Danv. 208. Strange, 691. 1 Ray. 374.  
Bull. N. P. 14. Holt, 4. 150.



do not proceed to an actual indictment, or appeal, and that the same damages may be recovered in such an action as in a writ of conspiracy, it hath been thought needless to inquire, whether such writ may be maintained for such a prosecution or not.

But howsoever the law may stand in relation to writs of conspiracy, there seems to be no manner of reason, that the stated form of such writs should any way restrain a proceeding by way of indictment or information against persons which are apparently within both the letter and meaning of the statute. (1)

It seems certain, that a man may not only be condemned to the pillory, (2) but also be branded, for a false and malicious accusation; but since it doth not appear to have been solemnly resolved, that such an offender is indictable upon the statute, it seems to be more safe and advisable to ground an indictment of this kind upon the common law than upon the statute, since there can be no doubt but that all confederacies whatsoever, wrongfully to prejudice a third person, are highly criminal at common law; (3) as where divers persons confederate (a) together by indirect means to impoverish a third person, or (b) falsely and maliciously to charge a man with being the reputed father (c) of a bastard child, or to maintain one another in any matter, whether it be true or false.

- (a) 1 Lev. 62.  
126.  
1 Sid. 174.  
1 Keble, 350.  
(b) 1 Lev. 62.  
1 Mod. 185,  
186.  
1 Sid. 68.  
1 Keble, 254.  
(c) 27 Ass. 44.  
9 Co. 56.  
3 R. Abr. 77.  
See Moor, 788.  
Salkeld, 174.  
1 Ventris, 303,  
304.  
6 Mod. 185.  
8 Mod. 320.

11 Mod. 55. Carth. 416. Foster, 221.

*Sect. 3.* Neither doth it seem to be any justification of a confederacy to carry on a false and malicious prosecution, that the indictment or appeal which was preferred, or intended to be preferred, in pursuance of it, was (d) insufficient, or that the court wherein the prosecution was carried on, or designed to be carried on, had no jurisdiction of the cause, or that the matter of the indictment did import no manner of scandal, so that the party grieved was in truth in no danger of losing either his life, liberty, or reputation. For notwithstanding the injury intended to the party against whom such a confederacy is formed may perhaps be inconsiderable, yet the association to pervert the law in order to procure it, seems to be a crime of a very high nature, and justly to deserve the resentment of the law. (e)

- (d) Palm. 45.  
3 Keble, 141.  
Style, 157.  
1 R. Abr. 110.  
9 Coke, 26.  
Yelv. 46. 117.  
C. Eliz. 563.  
2 Buls. 270, 271.  
Cro. Jac. 357.  
1 Roll. Rep.  
109.  
(e) Reg. 134.  
F. N. B. 116.  
3 Ass. 13.  
11 H. 7. 25, 26.  
1 R. Abr. 112.

2 Mod. 52. 326. Con. 2 Keb. 881. W. Jones, 94. 2 Cr. 150.

### *Sect.*

(1) In an action for a malicious prosecution, it is incumbent on the plaintiff to shew that the original suit, wheresoever instituted, is at an end; for otherwise he might recover in the action, and afterwards be convicted upon the original suit. Douglas, 215. 2 Term Rep. 225; for this purpose he must produce and move a copy of the acquittal on record, the substance of the evidence, the charges of acquittal, and the circumstances which shew the prosecution was malicious and without probable cause. Eull. Nisi Prius, 13, 14. But if the prosecution was for a misdemeanour, a copy of the record is not necessary to be granted by the court to found the action. Morrison v. Kelly, 1 Bl. Rep. 385.

(2) Abolished by st. 56 Geo. 3. c. 138.

(3) Modern cases of conspiracy have certainly stretched the doctrine of conspiracy far beyond the old rule of law; and, in the opinion of Lord Ellen-

borough, ought not to be pushed any further. Anciently the offence was considered to consist in imposing, by combination, a "false crime upon any person;" or, in other words, to convict an innocent man by perversion of the law and by perjury. This certainly was an offence of complicated enormity, and may account for the severity of the judgment, namely, the Villainous Judgment, and which was only inflicted in one other case, that of attain against jurors for a false verdict; that offence also involving the complicate guilt of perversion of justice and perjury. However, in the case of the King v. Turner and another (13 East Rep. 228.), which was an indictment against the defendants for a conspiracy to enter a preserve and kill hares, the court held, that an indictment for a combination to commit a mere civil trespass, could not be supported

*Sect. 4.* Neither (a) is it any plea for one who is prosecuted for such an unlawful confederacy, that nothing more was intended by him, but only to give his testimony in a legal course of justice against the party to whose prejudice such confederacy is supposed to have been formed; for notwithstanding it may be said, that it would be a great discouragement to legal proceedings to make persons liable to a criminal prosecution, for barely intending to give their evidence, and it would be a pre-judging of a cause to try the truth of the testimony intended to be given in it before the cause itself is determined, yet the law will rather venture this mischief, than suffer so flagrant a villainy to go unpunished. However, if there be any probability that the principal cause will ever be tried, it seems proper to apply to the court to stay the trial of the confederacy until the merits of the principal cause be determined.

(a) 9 Co. 55, 56, 57.  
12 Co. 23. 90, 91, 92.  
C. Eliz. 70, 71.  
134.  
1 Leon. 107.  
1 R. Abr. 113, 114, 115.  
Winch. 28. 54.  
Litch. 79, 80.  
Con. 1 R. Abr. 10.  
F. N. B. 115.  
27 H. 8. 2.

*Sect. 5.* Yet (b) it seems to be certain, that no one is liable to any prosecution whatsoever, in respect of any verdict given by him in a criminal matter, either upon a grand or petit jury; for since the safety of the innocent, and punishment of the guilty, doth so much depend upon the fair and upright proceeding of jurors, it is of the utmost consequence, that they should be as little as possible under the influence of any passion whatsoever. And therefore, lest they should be biassed with the fear of being harassed by a vexatious suit for acting according to their consciences (the danger of which might easily be insinuated, where powerful men are warmly engaged in a cause, and thoroughly prepossessed of the justice of the side which they espouse), the law will not leave any possibility for a prosecution of this kind.

(b) 27 Ass. 77.  
27 Ass. 12.  
9 H. 6. 44.  
Bridg. 130, 131.  
21 E. 3. 17.  
47 E. 3. 17.  
12 Co. 23, 24.  
Reg. 134.  
F. N. B. 115.  
27 H. 8. 2.  
S. P. C. 172, 173.  
Ld. Ray. 469.  
12 Co. 23, 24.

It is true, indeed, that jurors were formerly sometimes questioned in the Star-chamber, for their partiality in finding a manifest offender not guilty; but this was always thought a very great grievance: and surely as the law is now settled by Bushel's case, there is no kind of proceeding against jurors in respect of their verdicts in criminal matters allowed of at this day. As to the objection, that an attain lies against a jury for a false verdict in a civil cause, and that there is as much reason to allow of it in a criminal one, it may be answered, that in an attain, a man's property is only brought into question a second time, and not his liberty or life: and also it may be generally presumed, that a jury is likely to be equally influenced with the fear of an attain from either of the contending parties; whereas if any such examinations of their proceedings were allowed in criminal causes, they might be often in great danger of one side, by incurring the resentment of a powerful prosecutor, and provoking him to call their conduct into question for their supposed partiality; but they could have little to fear from an injured criminal, who would seldom be in circumstances to make his prosecution formidable.

F. N. B. 103, 106.  
Vaugh. 135.

*Sect. 6.* And as the law has exempted jurors from the danger of incurring any punishment in respect of their verdict in criminal causes, it hath also freed the judges of all courts of record from all prosecutions whatsoever, except in the parliament, for any thing

12 Coke, 24.  
See Vaugh. 138, 139.  
12 Ed. 4. 18.  
21 Edw. 4. 67.  
S. P. C. 173.

thing done by them openly in such courts as judges. For the authority of a government cannot be maintained, unless the greatest credit be given to those who are so highly entrusted with the administration of justice; and it would be impossible for them to keep up in the people that veneration of their persons, and submission to their judgments, without which it is impossible to execute the laws with vigour and success, if they should be continually exposed to the prosecutions of those whose partiality to their own causes would induce them to think themselves injured. Yet if a judge will so far forget the dignity and honour of his post, as to turn solicitor in a cause which he is to judge, and privately and extrajudicially tamper with witnesses, or labour jurors, he hath no reason to complain if he be dealt with according to the same capacity to which he so basely degrades himself.

12 Co. 24.

Carth. 416.

1 R. Abr. 107.

112, 113. 115.

B. Cor. 89.

*Sect. 7.* It appears not only from the words of the statute, but also from the plain reason of the thing, that no confederacy, whatsoever to maintain a suit can come within the danger of the statute, unless it be both false and malicious. For it would be a most dangerous discouragement of all legal prosecutions, if those who engage in them upon a probable ground should be in danger of being found guilty of so heinous a crime upon their not being able to bring their suits to their intended effect. And from hence it clearly follows, that if the defendants to an indictment or appeal in murder be found guilty of homicide *se defendendo*, or by misadventure, or get off by pleading the king's pardon, their prosecutors are in no danger of being punished as conspirators. And from the same ground it also follows, that if the defendants in a writ of conspiracy can shew a probable cause of suspicion, they shall be discharged; as where being accused of a conspiracy for indicting a person of larceny, they can shew that a larceny was committed at such a time and place, and that the party charged by them for such larceny was found by them at the same time and place, with suspicious circumstances; or where persons being charged with a conspiracy for indicting another for feloniously carrying away a woman with great violence, and numbers are able to prove that they saw the persons whom they so accused riding armed in a warlike manner, and following after those who in truth actually did the felony, and that it was the common report of the country that they were all of the company. But some have said, that there is a necessity to plead such matter specially, and that it cannot be given in evidence on the general issue.

S. P. C. 173.

22 Ass. 77.

1 Leon. 107.

C. Eliz. 134.

Keilw. 81. 83.

70 H. 7. 11.

20 H. 7. 11.

Keilw. 81.

C. Eliz. 134.

1 Leon. 107.

12 Mod. 208.

(a) 8 H. 4. 6.

26 Ass. 12.

S. P. C. 173.

C. Eliz. 701.

5 Mod. 222.

But if two per-

sons be indicted

for a conspiracy,

and one of them

pleads to issue,

and is found guilty,

judgment shall be given against him, *Rex v. Kinnersley and Moor*, 1 Strange, 193,

even although the other conspirator named in the indictment was dead before the indictment is preferred,

*Rex v. Nichols and Bygrave*, 2 Strange, 1227. 1 R. Abr. 111.

(b) 38 Ed. 3. S. P. C. 174.

*Sect. 8.* It plainly appears from the words of the statute, that one person alone cannot be guilty of conspiracy within the purport of it; from whence it follows, that if all the defendants who are prosecuted for such a conspiracy be acquitted but one, the (a) acquittal of the rest is the acquittal of that one also. Also upon the same ground it hath been holden, that no such prosecution is maintainable against a (b) husband and wife only, because they are

are esteemed but one person in law, and are presumed to have but one will.

And it is certain, that an action on the (a) case in the nature of a conspiracy may be brought against one only. Also (b) it hath been resolved, that if such an action be brought against several persons, and all but one be acquitted, yet judgment may be given against that one only.

(b) 1 R. Abr. 111, 112. C. Eliz. 701. 6 Mod. 170. 1 Saund. 228. Ray. 176. 497. Str. 144. 193, 1227. 1 Wils. 210. 5 Mod. 408. Latch. 80. 262. Buller, N. P. 14.

(a) Carth. 416.  
1 R. Abr. 111.  
112.  
F. N. B. 116.  
C. Jac. 194.  
C. Car. 239.  
3 Mod. 220.  
180. 2 Keb.  
12 Mod. 209.

As to the SECOND POINT, viz. In what manner offenders of this nature are to be punished.

*Sect. 9.* It is clear, that those who are convicted of conspiracy at the suit of the (c) party shall only have judgment of fine and imprisonment, and to render to the plaintiff his damages. Also it is certain, that he who is convicted at the suit of the (d) king, of a conspiracy to accuse another of a matter which may touch his life, shall have judgment that he shall lose the freedom and franchise of the law (whereby he is disabled to be put upon any jury, or to be sworn as a witness, (4) or even to appear in person in any of the king's courts); and also that his houses, lands, and goods, shall be seized into the king's hands, and his houses and land stripped and wasted, his trees rooted up and raised, and his body imprisoned. And this is commonly called a villainous judgment, and is given by the common law, and not by any statute, as is said generally in some (e) books to be the proper judgment upon every conviction of conspiracy at the suit of the king, without any restriction to such as endangered the life of the party. But I do not find this point any where settled. (5)

(c) 24 Ed. 3.  
34 b.  
3 Inst. 113.  
2 Inst. 383.  
562.  
S. P. C. 175.  
(d) 24 Ed. 3.  
34.  
12 Mod. 209.  
F. N. B. 116.  
3 Inst. 143.  
2 Inst. 562.  
S. P. C. 173.  
27 Assize, 59.  
Carth. 416.  
(e) See the  
books above  
cited.  
27 Ass. 59.  
S. P. C. 175.  
46 Ass. 11.  
Burr. 1026.  
Strange, 196.

Under this head of conspiracy may be classed the offence of *illegal combinations*, when the parties bind themselves to each other by oaths or engagements in the nature of an oath. To prevent this mischief, which at one time had gone to a great extent for seditious purposes. The stat. 37 Geo. 3. c. 123. which recites, "Attempts to have been made to seduce his majesty's land and naval forces by such means," enacts, "That if any person or persons, who shall in any manner or form whatsoever, administer or cause to be administered, or be aiding or assisting at, or present at and consenting to the administering or taking of any oath or engagement, purporting or intended to bind the person taking the same to engage in any mutinous or seditious purpose"

(4) It had been generally supposed that a conviction for a conspiracy of any sort rendered a person so convicted infamous and incompetent to be a witness. But in a late case in the Court of Admiralty, in which the matter underwent much discussion, and on great consideration it was determined, that the affidavit of a person who had been convicted of a conspiracy to commit a fraud, was admissible in evidence (see the judgment of Sir W. Scott in the case of the *Ville de Varsovie*, Robinson's Admiralty Reports). Perhaps it would

be more correct to say, that many cases, which are now called conspiracy, are illegal confederacies or combinations. For, strictly speaking, conspiracy by the old rule of law was a confederacy falsely to indict another or pervert the course of law and justice by perjury.

(5) There has been no instance of the villainous judgment since the reign of Edward the Third. The usual mode of punishment at present is by fine, imprisonment, and surety for the good behaviour. Burr. 996. 1027. Str. 196.

“ or tried again for the same offence or fact, as high treason or  
 “ misprision of high treason ; and that nothing in this act con-  
 “ tained shall be construed to extend to prohibit any person  
 “ guilty of any offence against this act, and who shall not be tried  
 “ for the same as an offence against this act, from being tried for  
 “ the same as high treason or misprision of high treason, in such  
 “ manner as if this act had not been made.”— *Sect. 8.*

By stat. 57 Geo. 3. c. 19. s. 24. it is recited, “ That whereas  
 “ divers societies or clubs have been instituted in the metropolis  
 “ and in various parts of the kingdom, of a dangerous nature and  
 “ tendency, inconsistent with the public tranquillity, and the ex-  
 “ istence of the established government, laws, and constitution of  
 “ the kingdom; and the members of many of such societies or  
 “ clubs have taken unlawful oaths and engagements of fidelity  
 “ and secresy, and have taken or subscribed, or assented to,  
 “ illegal tests and declarations ; and many of the said societies or  
 “ clubs elect, appoint, or employ committees, delegates, repre-  
 “ sentatives, or missionaries of such societies or clubs to meet,  
 “ confer, communicate, or correspond with other societies or  
 “ clubs, or with delegates, representatives, or missionaries of  
 “ such other societies or clubs, and to induce and persuade other  
 “ persons to become members thereof, and by such means main-  
 “ tain an influence over large bodies of men, and delude many  
 “ ignorant and unwary persons into the commission of acts  
 “ highly criminal. And whereas certain societies or clubs calling  
 “ themselves Spenceans, or Spencean Philanthropists, hold and  
 “ profess for their object the confiscation and division of land,  
 “ and the extinction of the Funded property of the kingdom: And  
 “ whereas it is expedient and necessary that all such societies or  
 “ clubs as aforesaid, should be utterly suppressed and prohibited  
 “ as unlawful combinations and confederacies, highly dangerous  
 “ to the peace and tranquillity of this kingdom, and to the consti-  
 “ tution of the government thereof, as by law established ; be it  
 “ enacted, that from and after the passing of this act, all societies  
 “ or clubs calling themselves Spenceans, or Spencean Philan-  
 “ thropist., and all other societies or clubs, by whatever name or  
 “ description the same are called upon or known, who hold and  
 “ profess, or who shall hold and profess the same objects and  
 “ doctrines, shall be, and the same are hereby utterly suppressed  
 “ and prohibited, as being unlawful combinations and confede-  
 “ racies against the government of our Sovereign Lord the  
 “ King, and against the peace and security of his majesty’s liege  
 “ subjects.”

“ From and after the passing of this act, all and every the said  
 “ societies or clubs, and also all and every other society or club now  
 “ established or hereafter to be established, the members whereof  
 “ shall be required or admitted to take any oath or engagement  
 “ which shall be an unlawful engagement, within the meaning of  
 “ an act passed in the Thirty-seventh year of his Majesty’s reign,  
 “ (37 Geo. 3. c. 123.) or within the meaning of an act passed in  
 “ the Fifty-second year of his present Majesty’s reign, (52 Geo.  
 “ 3. c. 104.) or to take any oath not required or authorized by  
 “ law ; and every society or club, the members whereof, or any of  
 “ them

“ them, shall take or in any manner bind themselves by such oath or engagement, on becoming, or in order to become, or in consequence of being a member or members of such society or club, and every society or club, the members or any member whereof shall be required or admitted to take, subscribe, or assent to, or shall take, subscribe, or assent to any test or declaration not required or authorized by law, in whatever manner or form such taking or assenting shall be performed, whether by words, signs, or otherwise, either on becoming or in order to become, or in consequence of being a member or members of any such society or club ; and every society or club that shall elect, appoint, nominate, or employ any committee, delegate or delegates, representative or representatives, missionary or missionaries, to meet, confer, or communicate with any other society or club, or with any committee, delegate or delegates, representative or representatives, missionary or missionaries, of such other society or club, or to induce or persuade any person or persons to become members thereof, shall be deemed and taken to be unlawful combinations and confederacies, within the meaning of an act passed in the Thirty-ninth year of the reign of his present Majesty, (39 Geo. 3. c. 79.) and shall and may be prosecuted, proceeded against, and punished, according to the provision of the said act ; and every person who, from and after the passing of this act, shall become a member of any such society or club, or who, after the passing of such act, shall act as a member thereof, and every person who, from and after the passing of this act, shall directly or indirectly maintain correspondence or intercourse with any such society or club, or with any committee or delegate, representative or missionary, or with any officer or member thereof, as such, or shall by contribution of money or otherwise, aid, abet, or support such society or club, or any members or officers thereof as such, shall be deemed guilty of an unlawful combination and confederacy within the intent and meaning of the said act, passed in the Thirty-ninth year of his majesty's reign, (39 Geo. 3. c. 79.) and shall and may be proceeded against, prosecuted, and punished, according to the provision of the said act with regard to the prosecution and punishment of unlawful combinations and confederacies.”—*Sect. 25.*

See this act under title, “ unlawful Assemblies.”

#### *Indictment.*

The indictment for a conspiracy, after stating that the parties confederated combined and conspired, and the purpose of the conspiracy, usually goes on to state that, “ In pursuance of such conspiracy they did ”—and then states the overt acts.—But this form is not necessary, it is sufficient to state merely the conspiracy and for what purpose. In the *King v Eccles* (Willes's Rep. 58. n. a) the indictment was for conspiring by indirect means to prevent one H. B. from following the trade of a Tailor. It was moved in arrest of judgment, that the means were not stated, and it was likened to the case of false tokens, under the st. H. 8. where it had been held that the false tokens used must be stated in the indictment. By Lord Mansfield “ the conspiracy is stated and its object ; it is not necessary that the means should be

be stated." Buller, J. "If there be any objection it is that the indictment states too much, it would have been good certainly if it had not added *by indirect means*, and that will not make it bad."

The venue must be laid where the conspiracy was, not where it was put in execution. (1 Salk. 174.)—But where a conspiracy is laid in one county, and acts of force of some of the conspirators proved there; acts done by other conspirators in another county may be given in evidence. (4 E. R. 171.)

### 6. Of Maintenance.

Co. Lit. 268. 2. Maintenance is commonly taken in an ill sense, and, in general, seemeth to signify an unlawful taking in hand, or upholding of quarrels or sides, to the disturbance or hinderance of common right.

Maintenance is said to be twofold.

Co. Lit. 3  
2 Inst. 213.  
1 Ric. 1. c.  
2 Ric. 215.

*Sect. 2. FIRST, Rurales*, or in the country; as where one assists another in his pretensions to certain lands, by taking or holding the possession of them for him by force or subtilty; where one stirs up quarrels and suits in the country, in relation to matters wherein he is no way concerned: and this kind of maintenance is punishable at the king's suit by fine and imprisonment, whether the matter in dispute any way depended in plea or not, but is said not to be actionable.

Pult. 25.  
2 Inst. 212. 563.  
2 R. Abr. 115.  
77.

*Sect. 3. SECONDLY, Curiales*, or in a court of justice; where one officiously intermeddles in a suit depending in any such court which no way belongs to him, by assisting either party with money, or otherwise, in the prosecution or defence of any such suit.

Of this second kind of maintenance there seem to be three species:

Co. Lit. 368.

*FIRST*, Where one maintains another without any contract to have part of the thing in suit, which generally goes under the common name of Maintenance.

*SECONDLY*, Where one maintains one side, to have part of the thing in suit, which is called Champerty.

*THIRDLY*, Where one laboureth a jury, which is called Embracery.

For the better understanding of the *FIRST* of the abovementioned species, I shall examine,

1. What shall be said to amount to an act of maintenance.
2. In what respects some such acts may be justified.
3. How far offences of this kind are restrained by the common law.
4. How far by statute.

As to the FIRST POINT, *viz.* What shall be said to amount to an act of maintenance.

*Sect. 4.* It seemeth clear, that whosoever assists another with money to carry on his cause, as by retaining one to be of counsel for him, or otherwise bearing him out in the whole or part of the expense of the suit, may properly be said to be guilty of an act of maintenance, as it seems to be taken for granted in the (a) books cited in the margin.

34 H. 6. 25. 26. 9 E. 4. 32. 21 H. 7. 40. 6 E. 4. 5. 19 E. 4. 3. 31 H. 6. 9. 17. 20. 24. 43. 44. 52. 2 R. Abr. 118. 6 Mo. D. 2 Rol. 77. (a) 28 H. 6. 7. 12. B. Maint. 7. 14

*Sect. 5.* Also it is said, that not only he who lays out his money to assist another in his cause, but also that he who by his friendship or interest saves him that expense which he might otherwise be put to, or but endeavours so to do, is also guilty of maintenance; as where (b) one persuades, or but endeavours to persuade, a man to be of counsel for another *gratis*.

(b) 28 H. 6. 7. 12. 34 H. 6. 25. 9 E. 3. 32. Main. 6. 7. 20.

*Sect. 6.* Also it is said, that all such persons may properly be called maintainers, who give, or but endeavour to give, any other kind of assistance to either of the parties in the management of the suit depending between them: as (c) by opening the evidence to the jury; or by (d) giving evidence officiously without being called upon to do it; or by speaking in the cause (e) as one of the counsel with the party; or by (f) retaining an attorney for him; or (g) perhaps by barely going along with him to inquire for a person learned in the law.

(c) 22 H. 6. 5. Main. 14. C. Eliz. 735. (d) 28 H. 6. 6. 11 H. 6. 41. Main. 5. 51. Main. 10. 2 R. Abr. 118. (e) Het. 79.

(e) Het. 78. 79. (f) 1 R. Abr. 593. (g) 19 E. 4. 3. 12 E. 4. 14.

*Sect. 7.* Also it hath been said, that those shall come under the like notion, who give any public countenance to another in relation to any such suit; as where one of great power and interest says (h) publicly, that he will spend twenty pounds on one side, or that he will give twenty pounds to labour the jury, whether in truth he spend one penny or not; or where such a person (i) comes to the bar with one of the parties, and stands by him while his cause is tried whether he say any thing or not; for such kinds of practices do not only tend to discourage the other party from going on in his cause, but also to intimidate juries from doing their duty.

(h) 22 H. 6. 5. Main. 14. Main. 8. (i) 22 H. 6. 6. 11 H. 6. 39. 19 E. 4. 3. Main. 51.

*Sect. 8.* But it seems that a bare (k) promise to maintain another is not in itself maintenance, unless it be either in respect of the public manner in which, or the power of the person by whom, it is made.

(k) 9 H. 7. 18. B. Champ. 9.

*Sect. 9.* Also it is said to be as much maintenance for a (l) juror, as for any other person, to solicit a judge to give judgment according to the verdict, because after a juror has given his verdict he has nothing more to do.

(l) B. Main. 40. 18 E. 4. 1. 2. 17 E. 4. 5. B. Main. 39.

*Sect. 10.* But it is said to be no maintenance for a juror to exhort his companions to join with him in giving such a verdict as seems to him to be right.

*Sect. 11.* However it seems clear, (m) that a man is in no danger of being judged guilty of an act of maintenance for giving

(m) 12 E. 4. 14. 19 E. 4. 3. 22 H. 6. 5.



B. Main. 17.  
3 R. Abr. 118.  
2 Inst. 564.  
Moor, 6.  
F. Main. 21.  
2 Roll. 181.  
Co. Litt. 364.  
2 Leon. 48.

giving another friendly advice; what action is proper for him to bring for the recovery of a certain debt, or what method it is safest to take to free him from such an arrest, or what counsellor or attorney is likely to do his business most effectually; for it would be extremely hard to make such neighbourly acts of kindness, which seem rather commendable than blame-worthy, to come under the notion of maintenance, which always seems to imply a contentious and over busy intermeddling in other men's matters, in which respect it is so highly criminal. Yet it is said, that a man of great power, not learned in the law, may be guilty of maintenance, by telling another who asks his advice, that he has a good title.

3 H. 6. 54.  
F. Main. 18.  
B. Main. 1.

If a mortgagee, not a party in the suit, advances money to support the title, it is not maintenance.  
3 P. W. 375.

*Sect. 12.* Also it hath been said, that no one can be guilty of maintenance in respect of any money given by him to another before any suit is actually commenced; yet if it plainly appear, that it was given merely with a design to assist him in the prosecution or defence of an intended suit, which afterwards is actually brought, surely it cannot but be as great a misdemeanor in the nature of the thing, and equally criminal at common law, as if the money were given after the commencement of the suit, though perhaps it may not in strictness come under the notion of maintenance.

47 Ed. 3. 10.  
B. Champ. 2.

*Sect. 13.* However, it is certain, that one may as properly be said to be guilty of maintenance, within the meaning of the words "*adhuc manu tenet*," in an action of maintenance, for supporting another after judgment, as for doing it hanging the plea; because the party grieved may be discouraged thereby from bringing a writ of error or attain.

As to the SECOND POINT, *viz.* In what respects some acts of this kind may be justified.

I shall consider the following particulars:

1. How far they are justifiable in respect of an interest in the thing in variance.
2. How far in respect of kindred or affinity.
3. How far in respect of other relations.
4. How far in respect of charity.
5. How far in respect of the profession of the law.

As to the FIRST of these particulars, *viz.* How far some acts of this kind are justifiable in respect of an interest in the thing in variance.

(a) 19 E. 4. 5.  
9 H. 6. 61.  
B. Main. 3. 53.  
2 R. Abr. 117.

*Sect. 14.* It seemeth to be clearly agreed, that if (a) a tenant in tail or for life be impleaded, he in remainder or reversion may lawfully maintain the defence of the suit with his own money.

(b) 6 E. 4. 2.  
2 R. Abr. 117.  
B. Main. 33.  
39 H. 6. 20.  
Main. 28.

*Sect. 15.* And upon the like ground it seems to be clear, that if, an action of trespass, &c. brought by or against a (b) lessee for years, the inheritance come into question, the lessor may lawfully

lawfully maintain his lessee, and give (a) evidence to prove the inheritance in himself; for though the judgment which may be given against the lessee cannot directly bind his inheritance, yet the verdict may be a prejudice to his title, being given on a supposal of his not having a good one.

(a) 14 H. 6. 7.  
B. Main. 23.  
2 R. Abr. 117.

*Sect. 16.* Also it hath been admitted as clear law, that if one seised in fee of certain land bring an action of trespass *quare clausum fregit*, and then alien the land, and afterwards in the trial of the cause it be questioned whether the inheritance at the time of the supposed trespass belonging to the plaintiff or defendant, the alienee may lawfully produce evidence to prove that the inheritance was in the plaintiff, because the plaintiff's title is now become his own.

*Sect. 17.* Also it hath been said, that not only those who have a certain interest, but also those who have a bare contingency of such an interest in the lands in question, which possibly may never come *in esse*, may in like manner lawfully maintain another in an action concerning such lands; from whence it follows, that if I grant to *B.* that if my lessee for life shall die during my life, that then he shall have the land for ten years, and after my lessee be impleaded, *B.* may maintain him.

9 H. 6. 4.  
2 R. Abr. 117.

*Sect. 18.* And it hath been said, that not only those who have a contingency of such an interest, which it is in no man's power to bar them of, if the contingency happen, may justify such maintenance, but that those also shall have the same privilege, who by the act of God have the immediate possibility of such an interest, though it be in the power of another to deprive them of it; and therefore that an heir apparent may lawfully maintain the ancestor in an action concerning the inheritance of the land whereof he is seised in fee.

14 H. 7. 2.  
19 Ed. 4. 3.  
21 H. 6. 16.  
2 Inst. 5. 6. 4.  
2 R. A. 115.

*Sect. 19.* But it is said, that the grantee of a reversion, before the late statute for amendment of the law which made all attornment needless, could not maintain the tenant of the land without attornment, because his possibility was wholly created by the act of the party, and could not be executed but by the voluntary attornment of the tenant, which there was no remedy to compel him to make by the common law; but perhaps the authority of this opinion may be questionable, especially if such grant were made for good consideration: for since those who have only an equitable interest in lands, may lawfully maintain others in actions relating to those lands, as shall more fully be shewn in the twenty-first section, and since the grantor in equity shall stand intrusted for the grantee after the grant, and the tenant may be enforced by a court of equity to attorn to him, I do not see any good reason why such grantee should be esteemed such a stranger to the land, that he may not lawfully defend an action concerning it, in the event whereof he is so nearly concerned.

9 H. 6. 64.  
2 R. Abr. 217.  
34 H. 6. 30.

*Sect. 20.* But it seems clear, that he who is bound to warrant lands, may lawfully maintain the tenant in the defence of his title, because he is bound by the warranty to render other lands to the value of those which shall be evicted.

11 H. 6. 41.  
B. Main. 51.  
2 R. Abr. 118.

*Sect.*

*Sect. 21.* Also it seems to be agreed, that he who hath an equitable interest in lands or goods, or even a chose in action, may lawfully maintain another in an action relating thereto; and therefore it seemeth to be clear, that a man may lawfully maintain (*a*) those who are infeoffed of lands in trust for him, in an action concerning those lands, and that if he sell them to another, the vendee shall have the same privilege.

(*a*) 34 H. 6. 30.  
15 H. 7. 2.  
2 E. 4. 2.  
B. Main. 19.  
30.

*Sect. 22.* Also it hath been (*b*) resolved, that where *A.* was bound as a surety for *B.* and *B.* thereupon made a deed of gift of certain sheep to *A.* in order to save him harmless from the said bond, with an implied trust that the sheep should be returned to *B.* if *A.* should not be damnified, and afterwards an action was brought against *A.* for the taking of sheep, *B.* might justify the maintaining of him in respect of the said trust.

(*b*) Noy, 100.  
Moor, 620.  
See 39 H. 6.  
19. 6. 20.  
F. Main. 14.

*Sect. 23.* Also it seemeth to be (*c*) certain that the assignee of a bond, or other chose in action, being made over to him for good consideration, in satisfaction of a precedent debt due *bonâ fide* to him, and not merely in consideration of the intended maintenance, may either maintain the obligee in an action brought by him for the debt, or commence an original action in his name, for he hath an equitable interest in the debt.

(*c*) 34 H. 6. 30.  
15 H. 7.  
Noy, 52.  
C. Eliz. 552.  
1 Sid. 21.  
B. Main. 9.

*Sect. 24.* Also it seemeth to be (*d*) agreed, that wherever any persons claim a common interest in the same thing, as in a way, churchyard, or common, &c. by the same title, they may maintain one another in a suit relating to the same.

(*d*) 18 E. 2. 4.  
B. Main. 41.  
Hob. 92.  
2 R. Abr. 118.  
Noy, 99.  
Moor, 562, 788.  
1 Roll. 57.  
(*e*) 34 H. 6. 26.  
14 H. 6. 6.  
18 Ed. 4. 12.

*Sect. 25.* It is said, that he who is (*c*) bail for another, may take care to have his appearance recorded, but that he ought not to intermeddle any farther.

As to the SECOND of the said particulars, *viz.* How far some acts of this kind are justifiable in respect of kindred or affinity.

*Sect. 26.* It seems to be agreed, that whoever is in any way of kin or affinity to either of the parties, so long as the same (*f*) continues, or but related to him by being his (*g*) godfather, may lawfully (*h*) stand by him at the bar, and counsel and assist him, and also pray another to be of counsel to him; but that he cannot justify the laying out of any of his own (*i*) money in the cause, unless he be either (*k*) father, or son, or heir apparent to the party, or the husband of such an heiress.

(*f*) 20 H. 6.  
6 Ed. 1. 5.  
14 H. 7. 2.  
(*g*) 6 Ed. 4. 5.  
F. Main. 16  
(*h*) 21 H. 6. 15.  
11 H. 6. 41. 42.  
12 H. 6. 2.  
19 Ed. 4. 32.  
9 H. 6. 64.  
9 Ed. 4. 32.  
(*i*) 19 Ed. 4. 5.

2 Inst. 564. (*k*) 21 H. 6. 16. 2 Inst. 564. Vide sup. s. 14.

As to the THIRD of the said particulars, *viz.* How far some acts of maintenance are justifiable in respect of other relations,

I shall consider,

1. How far a lord may maintain his tenant.
2. How far a tenant may maintain his lord.
3. How far a master may maintain his servant.
4. How far a servant may maintain his master.

5. How

## 5. How far one neighbour may maintain another.

As to the FIRST POINT, *viz.* How far a landlord may maintain his tenant.

*Sect. 27.* It seems certain, that not only the (a) lord, but also (a) 11 H. 6. 39. the *cestuy que use* of a scignory, may come with the tenant to a trial in an assize against him, and stand by him and assist him, b. 40. 2 R. Abr. 117. and also pray the sheriff to return an indifferent jury. B. Main. 50.

*Sect. 28.* Also it seemeth, that the (b) lord of a town, in an action brought against the inhabitants, wherein a right to a common burying-place, claimed by them, is brought into question, may maintain them in the defence of their right by shewing authentic evidence thereof to the jury. (b) 18 Ed. 4. 2. B. Main. 50.

*Sect. 29.* And in some (c) books it is said generally, that the lord may maintain his tenant, without saying how far he may do it; and I do not find it any where expressly holden, that the lord may justify laying out his own money in defence of his tenant's title: but it seemeth the better opinion, that he may as well justify it as any other of the abovementioned acts of (d) maintenance; for the lord, by accepting a man for his tenant, seemeth to take him under his immediate (e) protection; and inasmuch as the lands were originally derived from the lord, and he hath the continual benefit of the services due from them, the law, in many cases of (f) common right, obliges him to warrant them unto his tenant, and where it doth not oblige him, surely it will at least permit him to do it: but it seems clear, that he cannot maintain him in respect of any lands not holden of him. (c) 9 H. 6. 64. B. Main. 3. (d) Co. Lit. 65. (e) Co. Lit. 101. 384. 11 H. 6. 42. 2 R. Abr. 117. (f) F. Main. 25.

As to the SECOND POINT, *viz.* How far a tenant may maintain his lord.

*Sect. 30.* It is said, that he may justify (g) coming with his lord, and standing with him at a trial; but I cannot find any thing more relating to this matter in any of the books. (g) 11 H. 6. 42. 2 R. Abr. 116.

As to the THIRD POINT, *viz.* How far a master may maintain his servant.

*Sect. 31.* It is said that the master may go along with his (h) servant, or with his (i) chaplain, being retained to live in his house with him, in order to (k) retain counsel, and that he may pray one to be of counsel for him, and also that he may go with him to the (l) trial, and stand with him and aid him while the cause is tried, but ought not to speak in the court in favour of his cause. (h) Het. 79. (i) 19 H. 6. 30. (k) 28 H. 6. 7. 12. b. 13. 34 H. 6. 25, 26. B. Main. 6. 14. F. Main. 20. Con. F. Main. 13. (l) 19 H. 6. 30. 11 H. 6. 42. 2 R. Abr. 116. Het. 79.

*Sect. 32.* Also it is said, that if my servant be arrested in an action of (m) debt, I may assist him with money in order to keep him out of prison, that I may have the benefit of his service. (m) 21 H. 7. 40. Moor, 814. B. Main. 24. 51 H. 6. 9. 19 Ed. 4. 3. 2 R. Abr. 116. Het. 79. B. Main. 44. 52.

*Sect. 33.* But it is said, that the master, in real actions, cannot justify laying out money for his servant, unless he hath some of

of his wages in his hand ; which, if the servant be willing, the master may safely lay out on his behalf.

As to the **FOURTH POINT**, *viz.* How far a servant may maintain his master.

*Sect. 34.* It seemeth clear, that a person generally retained by another as his servant to do all manner of services, and not for  
 (a) 39 H. 6. 5, 6. a (a) particular occasion only, may justify (b) riding about to  
 Con. Keil. 50. speed his business, and going to (c) counsel in his behalf, and  
 (b) 19 E. 4. 3. hewing his evidences to the counsel or to the jury, and (d)  
 (c) 19 H. 6. 31. standing by him at a trial between him and another; but it is  
 (d) 11 H. 6. 42. certain that he cannot lawfully lay out any of his own (e) money  
 (e) 3 H. 6. 57. to assist the master in his suit.  
 54.  
 11 H. 6. 10, 11.

19 E. 4. 3. As to the **FIFTH POINT**, *viz.* How far one neighbour may  
 12 Edw. 4. 14. assist another.

*Sect. 35.* It seems clear, that a man may lawfully go with  
 (f) 19 E. 4. 3. his (f) neighbour to inquire for a person learned in law, but  
 2 R. Ab. 118. that he ought not to give him any money towards carrying on his  
 suit.

As to the **FOURTH INSTANCE**, wherein some acts of this kind are justifiable, *viz.* That relating to charity.

(g) 21 H. 6. 16. *Sect. 26.* It seems to be (g) agreed, that any one may lawfully  
 9 H. 6. 64. give money to a poor man to enable him to carry on his suit.  
 22 H. 6. 64.  
 22 H. 6. 55.

B. Main. 14. *Sect. 27.* Also it hath been adjudged, that any one may safely  
 (h) 19 E. 4. 3. go with a (h) foreigner who cannot speak English to a counsellor  
 34 H. 6. 25. and inform him of his case.  
 15 H. 7. 2.  
 B. Main. 7.

As to the **FIFTH INSTANCE**, wherein some acts of this kind may be justified, *viz.* That relating to the profession of the law.

I shall consider,

1. How far they are justifiable in a counsellor.

2. How far in an attorney.

As to the **FIRST POINT**, *viz.* How far acts of maintenance are justifiable in a counsel.

(i) 1 H. 6. 10, 11. *Sect. 28.* There is no doubt but that a (i) counsellor, having  
 2 R. Abr. 116. received his fee, may lawfully set forth his client's cause to the  
 2 Inst. 564. best advantage ; but it is certain, that he can no more justify (k)  
 (k) F. Main. 8. giving him money to maintain his suit, or threatening a juror,  
 22 H. 6. 6. than any other person.

As to the **SECOND POINT**, *viz.* How far acts of maintenance are justifiable in an attorney.

(l) 13 H. 4. 16. *Sect. 29.* There is no doubt but that an attorney may (l) law-  
 Keilw. 50. fully prosecute or defend an action in the court wherein he is an  
 Hob. 117. allowed attorney, in behalf of any one by whom he shall be spe-  
 2 Inst. 564. cially retained, and that he may assist his client, by laying out  
 2 R. Abr. 116. his own money for him to be repaid again, and also may main-  
 F. Main. 21. tain

tain an action against him for the same by virtue of such a retainer, without any special promise.

*Sect. 30.* And it is said also, that attorneys may justify such maintenance in other courts wherein they are not (*a*) allowed attorneys, but that they cannot have an action for the money so laid out without a special promise, and that they are more justified by a general (*b*) retainer to prosecute for another all his causes, than if they were not retained at all; and it is certain that they ought not to carry on a cause for another at their own expense, with a promise never to expect a repayment. And it seems justly questionable, whether solicitors who are no attorneys can in any case justify the laying out their money at another's suit.

(*a*) 3 Mod. 98.  
Vide 2 Danv.  
487. 12, 13, 14.  
Winch. 52.  
1 Jon. 208.  
C. Car. 159.  
194.  
Con. C. Eliz.  
415. 459. 760.  
Moor, 366.  
2 R. Abr. 114,  
115.  
(*b*) 2 R. Abr.  
114.

*Sect. 31.* However, it is certain that no counsellor or attorney can justify the using any deceitful practice in maintenance of a client's cause, and that they are liable to be severely punished for all misdemeanors of this kind, not only by the common law, but also by statute; for it is enacted by Westminster 1. c. 29. "That if any serjeant, pleader, or other, do any manner of deceit or collusion in the king's court, or consent unto it, in deceit of the Court, or to beguile the Court or the party, and thereof be attainted, he shall be imprisoned for a year and a day, and from thenceforth shall not be heard to plead to that court for any man. And if he be no pleader, he shall be imprisoned in like manner by the space of a year and a day at the least. And if the trespass require punishment, it shall be at the king's pleasure."

In the construction of this statute the following points have been holden.

*Sect. 32.* FIRST. That counsellors, &c. who are not sworn, are as much within the meaning of it as serjeants, &c. who are sworn.

11 E. 4. 3.  
B. Disc. 98.

*Sect. 33.* SECONDLY. That all fraud and falsehood, tending to impose upon or abuse the justice of the king's crown, are within the purview of it, as in the following instances:

2 Inst. 215.  
Dyer, 219.

*Sect. 34.* I. Where an attorney sues out an *habere facias seisinam*, falsely reciting a recovery in a real action, where in truth there was no recovery at all, and by colour thereof puts the supposed tenant in the action out of his freehold.

2 Inst. 215.  
F. N. B. 98.

*Sect. 35.* II. Where one brings a *præcipe* against a poor man, knowing that he had nothing in the land, on purpose to get the possession from the true tenant.

2 Inst. 215.

*Sect. 36.* III. Where one procures an attorney to appear for a man, and confess judgment without any warrant.

41 E. 3. 1.  
2 Inst. 215.

*Sect. 37.* IV. Where one pleads a false plea, known to be utterly groundless, and invented merely with a design to delay justice, and abuse the Court; and therefore it is said, that if a client desire his attorney to plead such a plea, the attorney ought

Dyer, 362.  
10 E. 4. 9.

ought to enter upon the roll, "*non sum veraciter informatus, ideo nihil dicit.*"

As to the THIRD GENERAL POINT, *viz.* How far offences of this kind are restrained by the common law.

- 2 Inst. 208. 212. *Sect. 38.* It seemeth, that all maintenance is strictly prohibited by the common law, as having a manifest tendency to oppression, by encouraging and assisting persons to persist in suits, which perhaps they would not venture to go on in upon their own bottoms; and therefore it is said, that all offenders of this kind are not only liable to an (a) action of maintenance at the suit of the party grieved, wherein they shall render such damages as shall be answerable to the injury done to the plaintiff, but also that they may be (b) indicted as offenders against public justice, and adjudged thereupon to such fine and imprisonment as shall be agreeable to the circumstances of the offence. Also it seemeth, that a court of record may commit a man for an (c) act of maintenance done in the face of the Court.
- (a) 11 H. 6. 11.  
2 Inst. 208.  
2 R. Abr. 114.  
3 H. 5. 8.  
(b) 2. R. Abr. 114.  
2 Inst. 208. 212.  
(c) Het. 79.

As to the FOURTH GENERAL POINT, *viz.* How far offences of this kind are punished by the statute.

*Sect. 39.* It is enacted by 1 Edw. 3. c. 14. which was further enforced by 20 Edw. c. 4. "That none of the king's ministers, nor no great man of the realm, by himself nor by other, by sending of letters, nor otherwise, nor none other great nor small, shall take upon them to maintain quarrels nor parts in the country, to the lett and disturbance of the common law."

*Sect. 40.* And it is further enacted by 1 Rich. 2. c. 4. "That none of the king's counsellors, officers, or servants, nor any other person within the realm of England, of whatsoever estate or condition they be, shall take or sustain any quarrel by maintenance, in the country or elsewhere, upon grievous pain, that is to say, the said counsellors and the king's great officers upon a pain which shall be ordained by the king himself, by the advice of the lords of his realm; and other less officers and servants of the king as well in the exchequer, and all his other courts and places, as of his own meiny, upon pain to lose their offices and services, and to be imprisoned, and then to be ransomed at the king's will, every of them according to their degree, estate, and desert; and all other persons through the realm upon pain of imprisonment, and to be ransomed as aforesaid."

In the construction of these statutes the following points have been holden.

- F. Main. 24. *Sect. 41.* FIRST, That maintenance of a suit in a court baron is as much within the purview thereof as maintenance in a court of record.

3 H. 6. 53, 54.  
B. Main. 1.  
F. Main. 18. *Sect. 42.* SECONDLY, That *nul tiel record* is a good plea to an action of maintenance brought on these statutes; and therefore, that he who barely assists another in taking out an original which never is returned, is not liable to any such action.

*Sect. 43.* THIRDLY, That it is not material, whether the plaintiff

tiff in an action on the said statutes were nonsuited, or recovered in the action wherein the maintenance is supposed. *Fitz. Maintenance, 17. 26.*

*Sect. 44.* Also it is certain, that he who fears that another will maintain his adversary, may, by way of prevention, have an original writ grounded on the said statute, prohibiting him so to do. *Reg. 182. b.*

*Sect. 45.* Also all persons are prohibited to give or receive any liveries or badges for maintenance, under severe penalties, by 1 Rich. 2. c. 7. 7 Hen. 4. c. 14. 13 Hen. 4. c. 3. 8 Hen. 6. c. 4. and 8 Edw. 4. c. 2. *12 Mod. 322.*

*Sect. 46.* And it is further enacted by 32 Hen. 8. c. 9. "That no person whatsoever shall unlawfully maintain, or cause  
"or procure any unlawful maintenance in any action, demand,  
"suit, or complaint, in any of the king's courts of the chancery,  
"Whitehall, or elsewhere, where any person shall have authority  
"by virtue of the king's commission, patent, or writ, to hold plea  
"of lands, or to examine, hear, or determine, any title of lands,  
"or any matter of witnesses, concerning the title, right, or  
"interest of any lands, tenements, or hereditaments; and also that  
"no person whatsoever do unlawfully retain, for maintenance of  
"any suit or plea, any person or persons, or embrace any free-  
"holders or jurors, or suborn any witness by letters, rewards,  
"promises, or any other sinister labour or means, for to maintain  
"any matter or cause, or to the disturbance or hindrance of jus-  
"tice, or to the procurement, by occasion of any manner of per-  
"jury, by false verdict or otherwise, in any manner of courts  
"aforesaid, upon pain to forfeit for every such offence ten  
"pounds; the one moiety thereof unto the king, and the other  
"moiety to him that will sue for the same by action of debt, &c."

*Sect. 47.* It seemeth, that in an information on this statute it is not sufficient to say, that the defendant maintained the party, without adding that he did it unlawfully. *Savil, 41, 42.*

*Sect. 48.* Also, it is said to have been adjudged, that maintenance of a suit in a spiritual court is neither within this nor any of the other above-mentioned statutes concerning maintenance. *Noy, 68. C. Eliz. 594.*

*Sect. 49.* Also it hath been holden, that in an information on this statute, it is necessary to shew that a plea was depending, and therefore that it is not sufficient to say that a bill was exhibited. *Savil, 41, 42.*

### 7. Of Champerty.

And now we are come to the second species of maintenance, called CHAMPERTY, which is the unlawful maintenance of a suit, in consideration of some bargain to have part of the thing in dispute, or some profit out of it. *2 Inst. 208. Co. Lit. 368.*

*Sect. 1.* Having shewn in the precedent chapter what shall amount to an act of maintenance, and how far all maintenance in general, and consequently champerty, is punishable by the common law, I shall only take notice in this place, how far this offence in particular is restrained by statute, and to that end shall set down



down in order the several statutes relating to it, and shew in what manner they have been expounded.

*Sect. 2.* And FIRST, it is enacted by the statute of Westminster 1. c. 25. "That no officers of the king, by themselves nor  
" by other, shall maintain pleas, suits, or matters hanging in the  
" king's courts, for lands, tenements, or other things, for to have  
" part or profit thereof by covenant made between them; and he  
" that doth shall be punished at the king's pleasure."

In the construction of the statute these following opinions have been holden.

2 Inst. 208. *Sect. 3.* FIRST, That by the king's courts, therein mentioned, are intended only his courts of record.

F. N. B. 172.  
2 Inst. 209.  
563. *Sect. 4.* SECONDLY, That under the word "covenant," which in a strict sense signifieth only an agreement by deed, all kinds of promises and contracts of this kind are included, whether they be made by writing or by parol.

47 Assize, 5.  
47 Ed. 3. 9. *Sect. 5.* THIRDLY, That maintenance in personal actions to have part of the debt or damages, is as much within the statute, as maintenance in real actions for a part of the land.

F. N. B. 172.  
2 Inst. 209.  
47 Ed. 3. 9.  
47 Ass. 5.  
9 H. 7. 18.  
F. Champ. 4. *Sect. 6.* FOURTHLY, That maintenance in consideration of a rent granted out of land in variance is within this statute, but that rent granted out of other lands is no way within the purview of it.

B. Champ. 2. *Sect. 7.* FIFTHLY, That it hath been holden not to be material, whether he who brings a writ of champerty did in truth suffer any damage by it, or whether the plea wherein it is alleged be determined or not.

(a) 21 E. 3. 52.  
30 Ed. 3. 3, 4.  
2 R. Abr. 113.  
31. *Sect. 8.* SIXTHLY, That the (a) maintenance of the tenant or defendant is as much within the meaning of the statute, as the maintenance of a demandant or plaintiff.

(b) 1 H. 7. 2.  
B. Champ. 6. *Sect. 9.* SEVENTHLY, That (b) such grants only of part of the thing in suit, which are made merely in consideration of the maintenance, are within the meaning of the statute, and not such as are made in consideration of a precedent honest debt, which is agreed to be satisfied with the thing in demand when recovered.

*Sect. 10.* And it is further enacted by the statute of Westminster 2. c. 49. "That the chancellor, treasurer, justices, nor  
" any of the king's counsel, no clerk of the chancery, nor of the  
" exchequer, nor any justice or other officer, nor any of the king's  
" house, clerk nor lay, shall not receive any church, nor advowson  
" of a church, land, nor tenement in fee, by gift or by purchase,  
" or to farm, nor by champerty, nor otherwise, so long as the  
" thing is in plea before the king, or before any of his officers,  
" nor shall take no reward thereof. And that he that doth contrary to this act, either himself, or by another, (or make any  
" bargain,) shall be punished at the king's pleasure, as well he that  
" purchaseth as he that doth sell."

In the construction of this statute the following opinions have been holden.

**Sect. 11.** FIRST, That it extendeth only to the officers therein named, and not to any other persons. 2 Inst. 484,  
485.

**Sect. 12.** SECONDLY, That it so strictly restrains all such officers from purchasing any land, hanging a plea, that they cannot be excused by a consideration of (a) kindred or affinity, and that they are within the meaning of the statute, by barely making such a purchase, whether (b) they maintain the party in his suit, or not; (c) whereas such a purchase, for good consideration made by any other person, of any terre-tenant, is no offence, unless it appear that he did it to maintain the party. (a) 2 Inst. 485.  
(b) 2 Inst. 484.  
50 Ass. 3.  
B. Champ. 8.  
F. Champ. 6.  
(c) 22 E. 3. 10.  
b. 52.  
2 Inst. 484.  
F. N. B. 172.  
D. E.

**Sect. 13.** And it is further enacted by 28 Edw. 1. c. 11. in the following words: "Because the king hath heretofore ordained "by statute, that none of his ministers shall take no plea for "maintenance, by which statute other officers were not bounden "before this time, the king wills that no officer, nor any other " (for to have part of the thing in plea), shall not take upon him "the business that is in suit; nor none upon any such covenant "shall give up his right to another; and if any do and be attainted "thereof, the taker shall forfeit unto the king so much of his land "and goods as doth amount to the value of the part that he hath "purchased for such maintenance. And to obtain this, whoso- "ever will, shall be received to sue for the king before the jus- "tices before whom the plea hangeth, and the judgment shall be "given by them. But it may not be understood hereby, that any "person shall be prohibited to have counsel of pleaders, or of "learned men in law, for his fee, or of his parents and next "friends." See also 33 Ed.  
1. st. 3.  
1 Rich. 2. c. 9.  
1 Inst. 369.

In the construction of this statute the following points have been holden.

**Sect. 14.** FIRST, That a (d) conveyance executed, hanging a plea in pursuance of a bargain made before, is not within the meaning of it. (d) 30 Ass. 15.  
8 Ed. 4. 13.  
2 Inst. 563.  
F. Champ. 13.  
F. N. B. 172.

**Sect. 15.** SECONDLY, That champerty in any action at (e) common law, whether it be real, personal, or mixt, is within this statute: also it seems the better opinion, that the purchase of land while a suit of (f) equity concerning it is depending, is within the purview of it. (e) 47 Ed. 39.  
47 Assize, 5.  
2 Inst. 563.  
(f) Moor, 655.  
Con. 2 R. Abr.  
113.

**Sect. 16.** THIRDLY, That a (g) lease for life, or years, or a voluntary gift of land, hanging a plea, is as much within the statute as a purchase for money. (g) 8 E. 4. 15.  
B. Champ. 10.  
F. N. B. 172.

**Sect. 17.** FOURTHLY, That a surrender made by a (h) lessee to his lessor is not within the meaning of this statute; for since the lessor may lawfully maintain his lessee without such a surrender, as hath been more fully shewn in the precedent chapter, surely *à fortiori* he may do it after the surrender. (h) F. N. B.  
172.  
2 Inst. 564.

**Sect. 18.** FIFTHLY, That no (i) conveyance, or promise thereof, (i) 2 Inst. 564.  
F. N. B. 172.

thereof, relating to lands in suit, made by a father to his son, or by any ancestor to his heir apparent, is within the statute, since it only gives them the greater encouragement to do what by nature they are bound to do.

- (a) 13 H. 7. 17. *Sect. 19.* That the (a) giving of part of the land in suit, after the end of it, to a counsellor for his wages, is not within the meaning of it, if it evidently appears that there was no kind of precedent bargain relating to such gifts; but it seems (b) dangerous to meddle with any such gift, since it cannot but carry with it a strong presumption of champerty.

† *Sect. 20.* And it is enacted by 31 Eliz. c. 5. "That the offence of champerty may be laid in any county, at the pleasure of the informer."

### 8. Of Embracery.

FOR the better understanding of the nature of EMBRACERY, I shall consider,

1. What kind of maintenance comes under the notion of embracery.
2. What acts of this nature are altogether unlawful.
3. In what circumstances some kinds of them may be lawful.
4. How far this offence is restrained by the common law.
5. How far by statute.

As to the FIRST POINT, *viz.* What kind of maintenance comes under the notion of embracery.

- (c) F. N. B. *Sect. 1.* It seems clear, that (c) any attempt whatsoever to corrupt or influence, or instruct a jury, or any way to incline them to be more favourable to the one side than to the other by money, promises, letters, threats, or persuasions, except only by the strength of the evidence and the arguments of the counsel in open court, at the trial of the cause, is a proper act of embracery, (d) whether the jurors on whom such attempt is made give any verdict or not, or whether the verdict given be true or false.

- (e) 13 H. 4. 16. *Sect. 2.* (e) And the law so abhors all corruption of this kind, that it prohibits every thing which has the least tendency to it, what specious pretence soever it may be covered with, and therefore it will not suffer a mere stranger, so much as to labour a juror to appear and act according to his conscience.

- (f) 39 Ass. 19. *Sect. 3.* Also it is said, that generally the giving of money to a juror (f) after the verdict, without any precedent contract in relation to it, is an offence savouring of the nature of embracery; because, if such practices were allowable, it would be easy to evade the law, by giving jurors secret intimations of such an intended reward for their service, which might be of as bad consequence as the giving of money before-hand. But it seems clear, that the giving of jurors such a reasonable recompense as is usually allowed them for their expenses in travelling, &c. and which

which may fairly be expected by them from either side that shall prevail, is no way criminal, because if no such allowance were to be expected, it would be often difficult to prevail with persons to serve on a jury at their own charge; and therefore by experience it hath been found necessary to permit the parties to give jurors some amends for their charges.

*Sect. 4.* It hath been adjudged, that the bare (a) giving of money to another to be distributed among jurors, is an offence of the nature of embracery, whether any of it be afterwards actually so distributed or not: also it is (b) clear, that it is as criminal in a juror as in any other person to endeavour to prevail with his companions to give a verdict for one side by any practices whatsoever, except only by arguments from the evidence which was produced, and exhortations from the general obligations of conscience to give a true verdict. And there can be no doubt but that all fraudulent contrivances whatsoever to secure a verdict are high offences of this nature; as where persons by (c) indirect means procure themselves or others to be sworn on a tale in order to serve one side.

(a) 22 H. 6. 5.  
23 H. 6. 7. 12.  
31 H. 6. 8. 9.  
B. Main. 6. 14.  
(b) 17 Ed. 4. 5.  
18 Ed. 4. 4.  
B. Main. 32.  
39.

(c) 1 Saund.  
301.

As to the SECOND POINT, *viz.* What acts of this kind are altogether unlawful.

*Sect. 5.* It seems clear, that neither the party himself, nor his counsel, nor attorney, nor any person whatsoever, can justify any indirect practices of influencing a jury, either by giving (d) or promising them money, or (e) menacing them, or (f) instructing them in the cause beforehand, &c.

(d) 13 H. 4. 16.  
17.  
11 H. 6. 11.  
2 R. Abr. 116.  
6. 3.  
(e) 19 H. 6. 31.  
13 H. 4. 17.

(f) 2 Bulst. 25. Noy, 102. Co. Lit. 362. Moor, 815.

As to the THIRD POINT, *viz.* In what circumstances some acts of this nature may be lawful.

*Sect. 6.* It seemeth clear, that any person who may justify any other act of maintenance, may safely labour a juror to (g) appear and give a verdict according to his conscience, but that no other person can justify intermeddling so far, and that no one whatsoever can justify the labouring a juror (h) not to appear.

(g) Dyer, 48.  
Co. Lit. 157.  
369.  
Moore, 813.  
Noy, 102.  
(h) Hob. 294.

As to the FOURTH POINT, *viz.* How far offences of this kind are restrained by the common law.

*Sect. 7.* There can be no doubt but that they subject the offender either to an indictment or action, in the same manner as in all other kinds of unlawful maintenance do by the common law. Also it seemeth, that if an act of embracery were not known before the trial of a cause, so that the party to whose prejudice it was intended, had no opportunity to prevent the ill effects of it, by challenging the juror who was practised upon, it will be a good ground to move the court to set aside the verdict.

As to the FIFTH POINT, *viz.* How far offences of this kind are restrained by statute.

*Sect. 8.* It is enacted by 5 Edw. 3. c. 10. "That if any juror  
" in assizes, juries, or inquests, take of the one party or of the  
" other

"other, and be thereof duly attainted, that hereafter he shall not be put in any assizes, juries, or inquests, and nevertheless he shall be commanded to prison, and further ransomed at the king's will. And the justices, before whom such assizes, juries, and inquests shall pass, shall have power to inquire and determine according to this statute."

*Sect. 9.* And it is further enacted by 34 Edw. 3. c. 8. "That in every plea whereof the inquest or assize doth pass, if any of the parties will sue against any of the jurors, that they have taken of his adversary or of him for to give their verdict, he shall be heard, and shall have his plaint by bill presently before the justices before whom they did swear, and that the juror be put to answer without any delay; and, if they plead to the country, the inquest shall be taken maintainant. And if any man other than the party will sue for the king against the juror, it shall be heard and determined as afore is said. And if the juror be attainted at the suit of other than the party, and make a fine, the party that sueth shall have half the fine; and that the parties to the plea shall recover their damages by the assessment of the inquest. And that the juror so attainted have the prison of one year, which imprisonment the king granteth, that it shall not be pardoned for any fine; and if the party will sue by writ, before other justices, he shall have the suit in the form aforesaid."

*Sect. 10.* And it is further enacted by 38 Edw. 3. c. 12. "That if any jurors in assizes sworn, and other inquests to be taken between the king and party, or party and party, do any thing take by them, or other, of the party, plaintiff, or defendant, to give their verdict, and thereof be attainted, by process contained in the said statute of 34 Edw. 3. be it at the suit of the party that will sue for himself, or for the king, or any other person, every of the said jurors shall pay ten times as much as he hath taken. And that he that will sue shall have the one half, and the king the other half. And that all the embraceors that bring or procure such inquest in the country to take gain or profit, shall be punished in the same manner and form as the jurors. And if the juror or embraceor so attainted have not whereof to make gree in the manner aforesaid, he shall have the imprisonment of one year: and the intent of the king, of great men, and the commons is, that no justice nor other minister shall inquire of office, upon any of the points of this article, but only at the suit of the party, or of other, as afore is said." See also the 32 Hen. 8. c. 9. s. 3. 6.

In the construction of these statutes the following points have been holden.

- (a) 5 Ed. 4. 3.  
B. Dec. Tant.  
2. 11.
- (b) 37 H. 6. 31.  
B. Dec. Tant.  
13.
- (c) 9 H. 6. 1.  
B. Dec. Tant. 1.

*Sect. 11.* FIRST, That all actions of *decies tantum*, being founded on an offence supposed to have been committed in some former action appearing upon record, it will be a good plea in bar, either that there is no (a) such record at all, or that there is not any such (b) record by which it may appear that the juror was sworn; and that it is a good (c) exception in abatement of the writ, that there

is a variance in the first record from that in the declaration in the present action; yet is said, that it is not necessary to (a) shew (a) 34 H. 6. 4. the whole record in certain, but only so much of it as conveys the plaintiff to his action.

*Sect. 12. SECONDLY*, That it is not (b) sufficient to shew that (b) 37 H. 6. 31. the defendants took money in order to embrace a jury, without F. N. B. 171. shewing also that they actually disposed of it accordingly.

*Sect. 13. THIRDLY*, That the (c) plaintiff must shew in cer- (c) Pl. Com. 85. tain how much was received, or otherwise the court will not know for what sum to give judgment.

*Sect. 14. FOURTHLY*, That the giving of money to a juror (d) (d) 39 Ass. 19. after the verdict is not within the statute, unless there were some B. Dec. Tant. precedent contract relating to it. 14.

*Sect. 15. FIFTHLY*, That it is not (e) material whether the (e) 21 H. 6. 31. jurors gave any verdict or not, or if they did give one, whether it 37 H. 6. 31. were true or false. B. Dec. Tant. 10.

13 F. N. B. 171. Co. Lit. 369. Dyer, 95.

*Sect. 16. SIXTHLY*, That all the jurors and embraceors may 40 Ed. 3. 3. be joined in one action, notwithstanding they severally received 36 H. 6. 28. different sums, because all was received in order to give the same B. Dec. Tant. verdict, which could not but be the entire act of all the jurors. 3, 4. But it seems, that each defendant ought to plead severally that F. N. B. 171. he did not take money in the manner as the plaintiff hath de- Finch, 255. clared. 21 H. 6. 20.

*Sect. 17. SEVENTHLY*, That the (f) defendants ought not to (f) B. Dec. plead generally not guilty, but that they ought specially to deny Tant. 1. the taking of the money, &c. 18 Savil. 42.

*Sect. 18. EIGHTHLY*. That the plaintiff (g) shall be paid the (g) 41 E. 3. 15. moiety of the money due to him on a judgment in *decies tantum* 44 E. 3. 36. before the king, because the king's moiety is not due as a debt, B. Dec. Tant. 5, 7. but as a fine; and wherever the king is entitled to a fine from the suit of a subject, the plaintiff shall first be satisfied.

*Sect. 19. NINTHLY*, That the husband (h) alone may bring (h) 7 H. 4. 2, 3. a *decies tantum*, for an embracery in a former action brought by 43 E. 3. 16. him and his wife, because by a *decies tantum* money only is to be B. Dec. Tant. recovered wherein the wife can claim no share. 9, 19.

*Sect. 20. TENTHLY*, That he who buys land to maintain a suit (i) 41 Ed. 3. 9. at a lower price than it is known to be worth, is as much within B. Dec. Tant. the statute, for so much as the (i) land is worth more than he gave, 4. as if he had received it in money. 1 R. Abr. 579.

*Sect. 21. ELEVENTHLY*, That this being a popular action may (k) 5 E. 4. 2. be barred by the (k) king's release, being made before any action 3. b. 2. c. 26. brought, but that it cannot be barred by the release of the party B. Dec. Tant. 15. grievd; and from the same ground also it follows, that the party C. Eliz. 138. grievd needs not in such action declare of any damages done to 583. him 11 Co. 65. 3 Inst. 194.

(a) 44 E. 3. 36. him by the embracery; but if he do, it is said that he (a) ought  
 B. Dec. Tant. 7. to lay them severally against each defendant, or else that his writ  
 shall abate, unless he will release them: but perhaps there may  
 be good reason to question this opinion; for why may not the  
 damages be as well recovered, as the action jointly laid against all  
 the defendants?

(b) 44 E. 3. 12. Sect. 22. TWELFTHLY, That no (b) process of outlawry lies in  
 47 E. 3. 4. this action, but only a *capias* or distress infinite, upon a *nihil* re-  
 B. Dec. 6. 8. turned, and that such distress ought to be of the lands which the  
 defendants had at the time of the writ of *decies tantum* purchased,  
 and not of those which they had at the time of the inquest; and that

(c) 47 E. 3. 4. no *capias* (c) into a foreign county lies against the jurors, because  
 it shall be presumed that they are in the county wherein they were  
 returned on the jury; but clearly this reason can no way be ex-  
 tended to the embracers; and perhaps it may be over-favourable  
 to carry it so far in relation to the jurors, especially since the dis-  
 tress infinite can only affect the lands which they had at the time  
 of the *decies tantum*, before which they may possibly have sold  
 those which they had at the return of the *venire*; and why should  
 not the sheriff's present return, that the defendants have nothing  
 in the county, overbalance the presumption chiefly grounded on  
 the former return, with which the present is not inconsistent,  
 being made at a subsequent time?

Vide 6 E. 4.  
 11. a.  
 2 R. Abi. 277.

### 9. Of the Offence of Buying or Selling a Pretended Title.

For the better understanding the offence of buying or selling  
 a pretended title, I shall consider:

1. How it is restrained by common law.
2. How by statute.

As to the FIRST POINT, viz. How it is restrained by com-  
 mon law.

Moore, 751.  
 Hobart, 115.  
 Plowden, 80.  
 33.

Sect. 1. It seemeth to be a high offence at common law, to  
 buy or sell any doubtful title to lands known to be disputed, to  
 the intent that the buyer may carry on the suit, which the seller  
 doth not think it worth his while to do, and on that consideration  
 sells his pretensions at an under-rate. And it seemeth not to be  
 material whether the title so sold be a good or bad one, or whether  
 the seller were in possession or not, unless his possession were  
 lawful and uncontested. For all practices of this kind are by all  
 means to be discountenanced, as manifestly tending to oppression,  
 by giving opportunities to great men to purchase the disputed  
 titles of others, to the great grievance of the adverse parties, who  
 may often be unable or discouraged to defend their titles against  
 such powerful persons, which perhaps they may safely enough  
 maintain against their proper adversary.

As to the SECOND POINT, viz. How far offences of this kind  
 are restrained by statute.

Sect.

*Sect. 2.* It is recited by 1 Rich. 2. c. 9. "That many persons having true title to lands, and also in personal actions were wrongfully delayed of their rights and actions, by means that the defendants did commonly make gifts and feoffments of their lands in debate, and of their goods, to lords and other great men, against whom the said pursuants, for menace that was made to them, neither could nor durst make their pursuits; and also that many persons oftentimes used to disseise others, and anon after such disseisin to make divers feoffments, sometimes to lords and other great men to have maintenance, and sometimes to persons unknown, to the intent to delay the said disseisees, &c." and it is thereupon enacted, "That from thenceforth no gift, or feoffment of lands, tenements, or goods, be made by such fraud or maintenance: and that if any be in such wise made, they shall be holden for none and of no value; and that the said disseisees shall from thenceforth have their recovery against the first disseisor, as well of the lands and tenements as of their double damages, without having regard to such alienations, so that the disseisees commence their suits within the year next after the disseisin done."

*Sect. 3.* In the construction of the statute it hath been holden, that feoffments of this kind are only void in respect of the disseisees, but that they are effectual between the feoffor and feoffee, &c.

*B. Feoffments de terre, 1. 19. Co. Lit. 369.*

† And it is enacted by stat. 13 Ed. 1. c. 49. "That no person of the king's house shall buy any title whilst the thing is in dispute, on pain of both the buyer and seller being punished at the king's pleasure."

*Sect. 4.* And it is further enacted by 32 Hen. 8. c. 9. "That no person or persons whatsoever shall bargain, buy, or sell, or by any ways or means obtain, get, or have any pretended rights or titles, or take, promise, grant, or covenant to have any right or title, of any person or persons, in, or to any manors, lands, tenements, or hereditaments, but if such person or persons which shall so bargain, sell, give, grant, covenant, or promise the same, their ancestors, or they by whom he or they claim the same, have been in possession of the same, or of the reversion or remainder thereof, or taking the rents or profits thereof, by the space of one whole year next before the said bargain, covenant, grant, or promise made; upon pain that he that shall make any such bargain, sale, promise, covenant, or grant, to forfeit the whole value of the lands, tenements, or hereditaments so bargained, sold, promised, covenanted, or granted, contrary to the form of this act. And the buyer or taker thereof, knowing the same, to forfeit also the value of the said lands, tenements, or hereditaments, so by him bought or taken, as is above said. The one half of the said forfeitures to be to the king, and the other half to the party that will sue for the same in any of the king's courts of record, by action of debt, bill, plaint, or information, in which action, bill, plaint, or information, no essoin, protection, wager of law, nor injunction shall be allowed."

*Ld. Ray. 537.*

*Sect.*



*Sect. 5.* But it is provided by the said statute, "That it shall be lawful to any person, being in lawful possession, by taking of the yearly farm, rents or profits, of, or for any manors, lands, tenements, or hereditaments, to buy, obtain, get, or have by any reasonable way or means, the pretended right or title of any other person or persons, hereafter to be made to, of, or in such manors, lands, tenements, or hereditaments, whereof he or they shall so be in lawful possession, any thing in the said act contained to the contrary notwithstanding."

*Sect. 6.* And it is further provided, "That the said statute shall not extend to charge any person with any of the above-mentioned penalties, except such person be sued for the offence within one year."

In the construction of this statute the following opinions have been holden.

Plowd. 83.

*Sect. 7. I.* That it is not material whether any suit be pending concerning the lands contracted for, or not, whereas the statutes set forth in the precedent chapters extended only to contracts concerning lands which were actually in suit.

Lit. Rep. 369.  
B. 2. c. 25. s. 101.  
Plowd. 84.  
C. Car. 233.  
Dyer, 74.  
Con. 1 And 76.

*Sect. 8. II.* That, in an action on this statute, the plaintiff needs not recite it, because the judges are bound *ex officio* to take notice of it, being of a public nature; but that if he do recite it, he must, at his peril, take care to recite it certainly, because it is the ground of his action; and the Court will not aid him by intending that there is another statute to maintain his action, different from that whereon he himself hath founded it.

1 Leon. 167.  
1 Burr. 300.

*Sect. 9. III.* That, in such an action against the buyer of a pretended title, it ought expressly to appear, that the defendant did not know that the seller had not been in possession the year before: and *vice versa*, that in such an action by the buyer the contrary ought to appear, for otherwise it may be intended, that he was *particeps criminis*, and therefore ought not to have any share of the penalty.

Lit. Rep. 369.  
Dyer, 74.  
Plowd. 80. 88.  
C. Car. 233.

*Sect. 10. IV.* That it is not sufficient to shew, that the seller had not been in possession, &c. a year before, without expressly averring that he had a pretended right or title, because that is in the point of the action.

(c) C. Car. 233.

*Sect. 11. V.* That it is not (a) sufficient to set forth the value of the land at the time of the conveyance executed, without shewing the value at the time of the bargain, because the forfeiture is governed by the latter.

(b) 4 Co. 26.  
Co. Lit. 369.  
Moore, 655.  
Plowd. 80. 88.  
Dy. 74. 374.  
(c) Co. Lit. 369.  
Con. Mo. 266.  
Dyer, 374.  
(d) Co. Lit. 369.

*Sect. 12. VI.* That a contract for (b) customary right to a copyhold estate, or for a lease for (c) years, is as much within the statute as a contract for the fee simple; for the words of the statute are, "*any right or title*," and such contracts are as much within the mischief intended to be redressed by the statute as any others can be: but it is (d) said, that a lease for years, made with an intent to try the title in ejectment, is not within the

the meaning of the statute, because it is in a kind of course of law, unless it be made to a powerful man to swāy the cause.

*Sect. 13. VII.* That, in an action for the making such a lease for years, it is not necessary precisely to set forth the commencement and end of it, because the plaintiff is supposed to be a stranger to it. Plowd. 81. 85.  
Dyer, 74.

*Sect. 14. VIII.* That a lease for years by one out of possession, being made off the land, is as much within the statute as if it had been made upon the land, though it be wholly void in law; for it is a lease in reputation, and taken for such among the vulgar, and tends as much to disquiet the possession as if it had been effectual in law. 1 Leon. 166.  
1 And. 76. 77.

*Sect. 15. IX.* That no conveyance made by one who hath the uncontested possession, and undisputed absolute property of the lands, is any way within the meaning of the statute, because it no way savours of maintenance, and can be prejudicial to no one; from whence it follows, that a disseisor obtaining the release of the disseisee, or a mortgagor redeeming his land, are in no danger of the statute in respect of any contract by them made concerning such land, after such a release or redemption. B. Main. 38.  
Plowd. 88. 89.  
Co. Lit. 369.

*Sect. 16. X.* That one who gains the possession of lands by virtue of a judgment of law in affirmance of an ancient title, cannot come within the meaning of this statute in respect of any lease made of such lands; for it can never be imagined that it was the intent of the statute to oblige all persons who should recover their lands to occupy them themselves, which would be generally inconvenient, and often wholly impracticable; and therefore it must be admitted from the necessity of the case, that such persons may lawfully lease their lands and houses to proper tenants, to be manured and occupied for the usual rents: but if it shall appear that the title to such lands is still contested notwithstanding such recovery, and that such lease was in truth designed for the maintenance of the title, I can see no reason why it should not be as much within the statute as any case whatsoever. Plowd. 88. 89.  
Moor, 655.

However there seems to be no doubt, but that if a disseisee enter upon a disseisor, being in possession of the land under a pretended title, and immediately sell it to a stranger, he is as much within the statute as if he had been out of possession at the time of such sale; for notwithstanding his entry was lawful, and he had both the absolute property and possession of the land, yet inasmuch as the disseisor claims a title to it which is yet in dispute, such a sale by the disseisee seems within the intent of the statute, which meant absolutely to restrain all persons from transferring their disputed titles to any stranger whatsoever. 1 Leon. 166.  
167. But Co.  
Lit. 369. seems  
contrary.

But it is said, that such a sale by a father to his son and heir apparent is excepted out of the general purview of the statute by common reason, which, by the ties of nature as well as of interest, obliges such a son to maintain his father; yet it hath been Savil, 95. 96.  
1 Leon. 167.  
Modern, 656.

been holden, that such a sale to a brother of the half blood is within the statute.

1 Leon. 167.  
Savil, 94. 96.

*Sect. 17. XI.* It is said, that by the abovementioned proviso, "that one who is in lawful possession by taking the yearly rents or profits of lands, &c. may lawfully buy the pretended right of any other person by reasonable means," is no more than the law would have implied, if it had not been expressed; for such a contract cannot possibly be to the wrong of any one, and tends rather to quiet suits than to promote them.

Co. Lit. 369.

And from the like reason also it is said, that a disseisor may lawfully get the release of the disseisee, though his possession was unlawful; and it seems clear, that such a release cannot come within the meaning of the statute, if the disseisee had the true right, and no other had any pretence of title to the land; for in such case it is clear, that the end of the release is not for maintenance, but for the settlement of all disputes: but if such a disseisee had had but a contested title, and such a release were intended only to enable the disseisor to defend himself with the dubious title of his disseisee, surely it cannot but be as much within the meaning of the statute, as any conveyance to one wholly out of possession.

Co. Lit. 369. b.

However it seems clear, that those instances in the said proviso, by which it is shewn how it shall appear that the persons who are permitted to contract for pretended titles are in possession, as by the receiving of rent, &c. are only put for examples, and that those who are any way whatsoever lawfully seised in possession, reversion, or remainder, are within the benefit of the proviso; but it seems clear, that they can only justify the taking such a conveyance as will strengthen the estate whereof they are seised, and that they cannot take a covenant from a stranger to convey the land to them, when he shall have recovered it on a pretended right, because such a covenant seems clearly to savour as much of maintenance, as if they had been strangers to the land.

*Sect. 18.* And it is enacted by the 31 Eliz. c. 5. s. 4. "That the offence of buying titles may be laid in any county, at the pleasure of the informer."

### *Of Barratry.*

In treating of Barratry, I shall consider,

1. Who shall be said to be a barrator.
2. In what manner such an offender is to be proceeded against.
3. To what punishment he is liable.

As to the FIRST POINT, *viz.* Who shall be said to be a barrator.

*Sect. 1.* It seems, that a barrator is a common mover, exciter, or maintainer of suits or quarrels, either in courts, or in the country.

*Sect.*

Minshew.  
Dufresne.  
Spelman.

Dalt. p. 38.  
Co. Lit. 268.  
8 Coke, 36.  
Cro. Jac. 527

*Sect. 2.* And it is said not to be material, whether the courts wherein such suits are commenced be of record or not, or whether such quarrels in the country relate to a disputed title of possessions or not; but that all kinds of disturbances of the peace, and the spreading of false rumours and calumnies, whereby discord and disquiet may grow among neighbours, are as proper instances of barratry, as the taking or keeping the possession of lands in controversy.

Co. Lit. 368.  
8 Coke, 36.

*Sect. 3.* But it hath been holden, that a man shall not be adjudged a barrator in respect of any number of false actions brought by him in his own right. However, if such actions be merely groundless and vexatious, without any manner of colour, and brought only with a design to oppress the defendants, I do not see why a man may not as properly be called a barrator for bringing such actions himself, as for stirring up others to bring them.

1 R. Abr. 355.  
Modern, 98.  
8 Coke, 36.

*Sect. 4.* But it seems, that an attorney is in no danger of being judged guilty of barratry, in respect of his maintaining another in a groundless action, to the commencing whereof he was no way privy.

3 Mod. 97. 93.

*Sect. 5.* Also it seems clear, that no one can be a barrator in respect of one act only; for every indictment for such a crime must charge the defendant with being *communis barractor*.

8 Coke, 36.

*Sect. 6.* It seems to have been holden, that a *feme covert* cannot be indicted as a common barrator; but this opinion seems justly questionable; for since a *feme covert* is as capable of exciting quarrels, in the frequent repetition whereof the notion of barratry seems to consist, as if she were *sole*, why should she not as properly be indictable for it.

2 Roll, 39.  
See chap. 1.

As to the SECOND POINT, *viz.* In what manner offenders of this kind are to be proceeded against.

*Sect. 7.* It is enacted by 34 Edw. 3. c. 1. "That in every county shall be assigned for the keeping of the peace one lord, and with him three or four of the most worthy of the county, &c. and that they shall have power to restrain offenders, rioters, and other barrators, and pursue, arrest, take, and chastise them, according to their trespass or offence; and so cause them to be imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement, &c."

*Sect. 8.* It seemeth from these words, that justices of peace, as such, have cognizance of barratry without any other commission; *sed quare*, for the contrary opinion seems to have been holden in Roll's Reports.

Con. B. 2. c. 8.  
s. 38. 39.  
Yelverton, 46.  
2 Roll, 151.

*Sect. 9.* However, it seems clear, that no general indictment of this kind, charging the defendant with being a common oppressor, and disturber of the peace, and stirrer-up of strife among neighbours, is good, without adding the words *communis barractor*

1 Modern, 288.  
1 Sid. 282.  
C. Jac. 526.

*ractator*, which is a term of art appropriated by the law to this purpose.

(a) 2 R. Ab. 79. Sect. 10. (a) Also it seemeth to be certain, that an indictment of barratry concluding *contra formam statuti* is good, though no statute be made directly against it, but only for the punishment of it, supposing it an offence at common law.

82.  
C. Jac. 527.  
C. Car. 340.  
2 Keb. 409, 410.  
C. Eliz. 148. † Sect. 11. (b) Also it hath been holden, that an indictment of this kind may be good, without alleging the offence at any certain place, because from the nature of the thing, consisting in the repetition of several acts, it must be intended to have happened in several places; for which cause it is said, that a trial ought to be by a jury from the body of the county.

(b) 2 Keb. 410.  
C. Eliz. 195.  
Con. Lat. 194.  
2 Hale, 180.  
Palmer, 450.  
1 Rolle, 295.  
(c) C. Jac. 527. Sect. 12. (c) But it hath been resolved, that such an indictment is not good without concluding *contra pacem*, &c.; for this is an essential part of it.

(d) 5 Mod. 18. Sect. 13. (d) Also it seemeth to be a settled practice not to suffer the prosecutor to go on in the trial of an indictment of this kind, without giving the defendant a note of the particular matters which he intends to prove against him; for otherwise it will be impossible to prepare a defence against so general and uncertain a charge, which may be proved by such a multiplicity of different instances.

As to the THIRD POINT, viz. In what manner offenders of this kind are to be punished.

Hutton, 104.  
Vide 1 Dan.  
Ab. 111. 113.

Sect. 14. It is said, that if they be common persons, they are to be fined and imprisoned, and bound to their good behaviour; and if they be of any profession relating to the law, that they ought also to be further punished by being disabled to practise for the future.

#### 10. Compounding a Penal Action by Common Informer.

To prevent the abuse of justice by common informers, and to hinder them from converting popular actions into instruments of oppression, the statute of 18 Eliz. c. 5. s. 1. directs that every informer on any penal statute shall exhibit his suit in person, and that the information shall be marked with the day, month, and year when it was exhibited; and then, by s. 3., enacts, "That no such informer shall compound for such offence, but after answer to the information; nor after answer but by consent of the court in which the suit shall be depending; and if any such informer shall willingly delay suit, or shall discontinue or be nonsuit, or have the matter pass against him by verdict or judgment, the informer shall pay costs."

And by s. 4. "If any person (except the clerks of the court only, for making out of process otherwise than is above-appointed) shall offend insuing out of process, making of composition, or other misdemeanour, contrary to the statute, or shall by colour of process, or without, upon pretence of any penal law, make any composition, or take any money, or promise, without consent of some of the courts at Westminster; he shall stand in the pillory two hours (now abolished), and shall for ever be disabled to pursue upon any statute, popular or penal, and

“and shall also forfeit ten pounds, one half to the queen, and the other half to the party grieved.”

It has been held, upon a conference among the judges, that this statute applies to the case of a person compounding without leave of the court, even when no process is depending in court. (a) But it does not apply to informations sued before magistrates. (b)

(a) Chetwynd's  
Burn, v. 3.  
p. 168.  
(b) R. v. Crisp,  
1 B. & A. 282.

There is a saving by sect. 5. that it shall be lawful for any person grieved by maintenance, champerty, buying of titles, or embracery, to pursue upon any of the statutes against maintenance, &c.

### 11. *Breach of Prison, Rescue, Escapes, &c.*

Breach of prison, rescue, escapes, and the hinderance of bringing offenders to justice, which are all offences against the public justice of the kingdom, are considered of hereafter in the Second Book, c. 17, 18, 19, 20, 21.

Taking a reward to restore stolen goods, and advertising for restoration of stolen goods, have been before noticed in the chapter of Larceny (*vide ante*, p. 247. 249.)

## CHAP. XXVIII.

### OFFENCES AGAINST THE PUBLIC PEACE.

#### 1. SURETY of the peace, and surety for good behaviour.

##### 2. Affrays.

##### 3. Forcible entries and detainers.

##### 4. Riots, routs, and unlawful assemblies: and herein,

Of riots generally—Of felonious riots, by remaining together to the number of twelve, after proclamation to disperse—Of seditious assemblies—Of moss-trooping—Unlawful hunting and poaching—Of riotously preventing ships being loaded—and, Riotously destroying manufactories.

##### 5. Threatening letters.

##### 6. Libels.

#### 1. *Surety of the Peace, and Surety for Good Behaviour.*

Inferior offences either amount to an actual disturbance of the peace, or do not.

I shall here shew what security may be had against the breach of the peace.

FIRST, By surety for keeping the peace.

SECONDLY,\*By surety for the good behaviour.

As to *Surety for keeping the Peace*, I shall consider the following particulars:—

1. In what cases it ought to be taken *ex officio*.

2. At whose request it ought to be granted.

3. Against

3. Against whom it ought to be granted.
4. For what cause it is grantable.
5. In what manner it is grantable by the courts of Chancery and King's Bench.
6. In what manner it is grantable by a justice of peace.
7. In what manner the process for it ought to be executed.
8. How such process may be superseded.
9. What ought to be the form of a recognizance for this purpose.
10. How such a recognizance may be discharged.
11. How such a recognizance ought to be certified and proceeded upon.
12. How it may be forfeited.

As to the FIRST POINT, *viz.* In what cases surety of the peace ought to be taken *ex officio*.

Dalt. c. 67, 158.  
Lamb. 77, 78.  
9 Ed. 4. 3.  
B. Peace, 7, 8.  
Cromp. 135.  
142.  
21 E. 4. 40.  
Foster, 135.

*Sect. 1.* It seems, that any justice of peace may, according to his discretion, bind all those to the peace who in his presence shall make any affray, or shall threaten to kill or beat any person, or shall contend together with hot words, or shall go about with unusual weapons or attendants, to the terror of the people.

And also all such persons as shall be known by him to be common barrators:

And also all those who shall be brought before him by a constable for a breach of the peace in the presence of such constable:

And all such persons who, having been before bound to keep the peace, shall be convicted of having forfeited their recognizance. (1)

As to the SECOND POINT, *viz.* At whose request the surety of the peace ought to be granted.

Dalt. c. 68.  
Lamb. 78, 79.  
Crom. 133, 134.

*Sect. 2.* It seems agreed at this day, that all persons whatsoever, under the king's protection, being of sane memory, whether they be natural and good subjects, or aliens, or attainted of treason, &c. have a right to demand surety of the peace.

Dalt. c. 68.  
Lamb. 80.  
4 Comm. 250.

*Sect. 3.* But it has been questioned whether Jews or Pagans, or persons attainted of *præsumere*, have a right to it or not.

Register, 89.  
3 Keb. s. 433.  
Ld. Hard.  
Cases, 74.

*Sect. 4.* However it is certain, that a wife may demand it against her husband threatening to beat her outrageously, and that a husband also may have it against his wife. (2)

Dalt. c. 68. Lamb. 78. Crom. 133. 3 Lev. 128. F. N. B. 80. Rex v. A. R. Bowes, 1 Term Rep. 696. Rex v. Earl Ferrers, 1 Burr. 635.

As to the THIRD POINT, *viz.* Against whom the surety of the peace ought to be granted.

*Sect.*

(1) Conservators of the peace also may grant surety according to their discretion. 4 Burr. 250. And this seems to have been the principal duty of a conservator. 11 St. Tr. 316. A secretary of state, therefore, or a privy councillor, never bind to the peace or the good behaviour; for they are not, as such, conservators of the peace. Lord Holt indeed, in the case of Kendal, Roo, and others, so considered them; but Lord CAMDEN affirms, that no treatise, case, record, or statute has

ever called them conservators of the peace from the beginning of time down to that decision. 11 St. Tr. 317.

(2) But if the marriage be then a subject of judicial litigation in the ecclesiastical court, the court before which the recognizance is taken will order it to be specially worded, so as not to carry an admission on the face of it of the fact of the marriage. Str. 1231.

*Sect. 5.* There seems to be no doubt but that it ought, upon a just cause of complaint, to be granted by any justice of peace against any person whatsoever, under the degree of nobility, being of sane memory, whether he be a magistrate or private person, and whether he be of full age, or under age, &c. But infants and *femes covert* ought to find security by their friends, and not to be bound themselves; and the safest way of proceeding against a peer, is by complaint to the court of Chancery or King's Bench. (3)

Dalt. c. 68.  
Lamb. 81, 82.  
Cromp. 134.  
3 Keb. 433.  
2 Lev. 128.  
See the books  
above cited,  
and Fitz. Sub-  
poena, 20.

As to the **FOURTH POINT**, *viz.* For what cause the surety of the peace is grantable.

*Sect. 6.* It seems clear, that wherever a person has just cause to fear that another will burn his house, or do him a corporal hurt, as by killing, or beating him, or that he will procure others to do him such mischief, he may demand the surety of the peace against such person; and that every justice of peace is bound to grant it, upon the party's giving him satisfaction upon oath that he is actually under such fear; and that he has just cause to be so, by reason of the other's having threatened to beat him, or lain in wait for that purpose; and that he does not require it out of malice, or for vexation.

Dalt. c. 67.  
Lamb. 82.  
Crom. 135.  
1 Lev. 107.  
2 Lev. 228.  
F. N. B. 801.  
Reg. 88.  
Moor, 874.  
Godb. 215.  
1 Keb. 290.

*Sect. 7.* It seems also the better opinion, that he who is threatened to be imprisoned by another has a right to demand the surety of the peace; for every unlawful imprisonment is an assault and wrong to the person of a man: and the objection, that one wrongfully imprisoned may recover damages in an action, &c., and therefore needs not the surety of the peace, is as strong in the case of battery as imprisonment; and yet there is no doubt, but that one threatened to be beaten may demand the surety of the peace. (4)

Dalt. c. 67.  
Lamb. 82, 83.  
Com.  
17 Ed. 4. pl. 4.  
B. Peace, 22.  
Crom. 134.

As to the **FIFTH POINT**, *viz.* In what manner such surety is grantable by the courts of Chancery and King's Bench.

*Sect. 8.* It is enacted by 21 Jac. 1. c. 8. "That all process for the peace or good behaviour to be granted or awarded out of the same courts, or either of them, against any person or persons whatsoever, at the suit of, or by the prosecution of any person or persons whatsoever, shall be void and of none effect, unless such process shall be so granted or awarded, upon motion first made before the judge or judges of the same courts respectively (sitting in open court, and upon declaration in writing upon their corporal oaths, to be then exhibited unto them, by the parties which shall desire such process), of the causes for which such process shall be granted or awarded by or out of the said courts respectively, and unless that such motion and declaration be mentioned to be made upon the back of a writ; the said writings there to be entered and re-

" main

See 1 Lev. 53.  
1 Sid. 67.  
Skin. 61.  
Mullineux's  
case, Comb.  
427.

(3) It is said, that the fear of one cannot be the fear of another, and therefore every recognizance must be separate. Pult. 18. But in Mich. 23 Geo. 2. B. R. the court allowed three women to file joint articles of the peace against three men. The

King v. Nettle, &c. MSS. See also 4 Com. Dig. "Justices of Peace," (B. 5.)

(4) And although the fact from which the fear arises be pardoned, the court will receive it as a ground to grant the security upon. Str. 473.



"main of record; and that if it shall afterwards appear unto the said courts, or either of them respectively, that the causes expressed in such writings, or any of them, be untrue, that then the judge or judges of the said courts, or either of them respectively, shall and may award such costs and damages upon the parties grieved, for their, or any of their wrongful vexations in that behalf, as they shall think fit; and that the party or parties so offending shall and may be committed to prison by such judge or judges, until he or they pay the said costs and damages. (5)

As to the SIXTH POINT, *viz.* In what manner such surety is grantable by a justice of peace.

14 H. 7. 8, 9, 10.  
9 Ed. 4. 3.  
B. Mainpr. 39.  
Lamb. 85, &c.  
Dalt. c. 69.  
2 Wils. 158.

*Sect. 9.* It seemeth certain, that if the person to be bound be in the presence of the justice, he may be immediatly committed, unless he offer sureties; and from hence it follows, *à fortiori*, that he may be commanded by word of mouth to find sureties, and committed for his disobedience; but it is said, that if he be absent, he cannot be committed without a warrant from some justice of peace, in order to find sureties, and that such warrant ought to be under seal, and to shew the cause for which it is granted, and at whose suit; and that it may be directed to any indifferent person. (6)

As to the SEVENTH POINT, *viz.* In what manner the process for the peace ought to be executed.

Reg. 88.  
1 Keb. 203, 290.  
6 Mod. 43.  
2 P. Will. 202.  
Skinner, 61.  
2 Keb. 305.  
1 Sid. 67.

*Sect. 10.* It seems needless to give a particular account of the execution of the writ of *supplicavit*, because I do not find that it is much in use at this day, and therefore I shall refer the reader for this purpose to Fitzherbert's *Natura Brevium*, fol. 80, &c. (7)

But as to the execution of a warrant of a justice of the peace, the following rules are to be observed.

*Sect.*

(5) A peer or peeress cannot be bound over in any other place than the courts of King's Bench or Chancery. 4 Comm. 251. A peeress may demand surety against her lord, as in the cases of the Marquis of Carmarthen, Foster, 359. Lord Vane, Str. 1202. Earl of Stamford, Hardw. Cases, 74. Earl Ferrers, Burr. 631. 703. Lady Suathmore, Eas. 25 Geo. 3. 1 Term Rep. 696. Lord Howard, 11 Mod. 109. 3 Burr. 1922. The articles also must be verified by the oath of the exhibitant; an affirmation therefore is not sufficient. Str. 527. 12 Mod. 243. Nor will the court permit the truth of the allegations to be controverted by the defendant, but will order security to be taken immediately, if no objections arise upon the face of the articles themselves. Str. 1202. (K. v. H. Dogherty, E. R. 13. 171.) But if on an application for the assistance of the court to enforce the subsequent process, the articles should manifestly appear, from the corroborated affidavit of the defendant, to have been a malicious, voluntary, and gross perjury, the court will resist the application, and commit the offender. 2 Burr. 806. 3 Burr. 1922. Nor will the court receive articles of the peace, if the parties live at a distance in the country, unless they have previously made application to a justice in

the neighbourhood. 2 Burr. 780. And if the court do receive them, the secondary may indorse the attachment in the sum required, and order a justice of the country to take the security. 2 Burr. 1039. 1 Black. 233. Or, if very particular circumstances attend the case, the court will compel the justices by *mandamus*. Strange, 835. But that this is a singular instance, vide Sayer, 253.

(6) A justice cannot enjoin another to keep the peace under a penalty, 3 Com. Dig. 370. nor commit for not finding security, until the party has been required, and has refused so do. Per Pratt, King v. Wilks, E. 3 Geo. 3.

(7) If there be no proceedings on a *supplicavit* within a year, the recognizance is of course discharged; and if the party be committed after the expiration of that time, he shall be discharged upon very slight security. Fitzg. 268. If taken below, and the party appear pursuant to the condition, no indictment being lodged, he must be discharged. Hard. Ca. But the court in discretion may refuse to discharge a recognizance, even though the exhibitant appear and consent; for a breach against any other person is equally a forfeiture. 11 Mod. 109.

**Sect. 11. FIRST,** It can be executed only by the persons to whom it is directed, or some of them, unless it be directed to the sheriff, who may, either by parole, or by precept in writing, authorize an officer sworn and known, to serve it, but cannot empower any other person without a precept in writing. Lamb. 89.

**Sect. 12. SECONDLY,** If the warrant be made in the common form, directing the officer to cause the party complained of to come before some justice of the peace to find sufficient surety, &c., and if he shall refuse so to do, to convey him immediately to prison, without expecting any further warrant, until he shall willingly do the same, &c., the officer who serves it, before he makes any arrest, ought first to require the party to go with him, and find sureties according to the purport of the warrant; but upon his refusal to do either, he may carry him to the gaol by force of the same warrant without more. L. Quinto, 5 Ed. 4. 12, 13. B. False Imp. 18. Dalt. c. 69. Lamb. 90, 91. Crom. 235. 5 Co. 59. 6 Co. 54.

**Sect. 13. THIRDLY,** If the warrant specially direct, that the party shall be brought before the justice who made it, the officer ought not to carry him before any other. But if the warrant be general, to bring him before any justice of peace, &c. the officer has the election to bring him before what justice he pleases, and may carry him to prison for refusing to find surety before such justice. Dalt. c. 69. Brook, False Imprisonment, 11. 21 H. 7. 21. Lamb. 91, 95.

As to the EIGHTH POINT, *viz.* How such process may be superseded.

**Sect. 14.** It is said, that if one who fears that the surety of the peace will be demanded against him, find sureties before any justice of the peace of the same county, either before or after a warrant is issued against him, he may have a *supersedeas* from such justice, which shall discharge him from arrest from any other justice, at the suit of the same party, for whose security he has given such surety. Also it is said, that an appearance upon recognizance for the peace may be superseded, by finding sureties in the Chancery or King's Bench, and purchasing a writ testifying the same. But this practice having often been abused by turbulent persons, who, deservedly fearing to be bound to the peace or good behaviour, by justices of peace, would procure themselves to be bound thereto in the said courts, upon insufficient sureties, or upon the colourable prosecution of some person who would be ready at all times to release them at their pleasure, whereupon writs of *supersedeas* had been often directed to justices of peace, commanding them to forbear to arrest the parties for such causes, by reason whereof such turbulent persons used to misdeemean themselves among their neighbours with impunity, as it is recited by 21 Jac. 1. c. 8. it is thereupon enacted by the said statute, "That all writs of *supersedeas* to be granted out of either of the said courts, shall be void, unless such process be granted upon motion in open court first made, &c. upon such sufficient sureties as shall appear unto the judge or judges of the same court respectively, upon oath, to be assessed at five pounds lands, or ten pounds in goods, in the subsidy book, at the least; which oaths, and the names of such sureties, with the places of their abode, and where they stand 2 Chan. Rep. 68.

"so assessed in the subsidy books, shall be entered, and remain of record in the same courts; and unless it shall also first appear unto the said judge or judges, from whom such *superse-deas* is desired, that the process of the peace or good behaviour is prosecuted against him or them, desiring such *superse-deas bonâ fide*, by some party grieved, in that court, out of which such *superse-deas* is desired to be so awarded and directed."

As to the NINTH POINT, *viz.* What ought to be the form of such a recognizance.

Lamb. 100, 101.  
Dalt. c. 78.  
(a) The court of king's bench, on articles of the peace being exhibited, have power to require bail for such length of time as they shall think necessary for the preservation of the peace. Rex v. Bowes, 1 Term Rep. 696.

*Sect. 15.* If it be taken in pursuance of a writ of *supplicavit*, it must be wholly governed by the directions of such writ; but if it be taken before a justice of peace, upon a complaint below, it seems that it may be regulated by the discretion of such justice, both as to the number and sufficiency of the sureties, and the largeness of the sum, and the continuance of the time, for which the party shall be bound. And it hath been said, that a recognizance to keep the peace as to A. B. for a year, or for life, or without expressing any certain time (*a*) (in which case it shall be intended to be for life), or without fixing any time or place for the party's appearance, or without binding him to keep the peace against all the king's people in general, is good.

3 Com. Dig.  
371.  
Lamb. 105.  
Dalt. c. 124.

*Sect. 16.* However, it seems to be the safest way to bind the party to appear at the next sessions of the peace, and in the mean time to keep the peace as to the king, and all his liege people, especially as to the party, according to the common form of precedents.

As to the TENTH POINT, *viz.* How such a recognizance may be discharged.

(b) B. Peace,  
15. 17.  
1 H. 7. 2. 10.  
(c) 15 H. 7. 2.  
13.  
21 Ed. 1. 70.  
Dalt. c. 71.  
1 Lev. 255.  
(d) Lamb. 110.  
&c.  
Crom. 169. 169.  
114.  
11 H. 7. 12.  
11 H. 4. 13.  
B. 2. c. 36.  
61. c. 37. s. 3.  
2 Vent. 131.  
Savil, 53.  
1 Lev. 235.  
C. Jac. 282.  
Yelv. 207.  
13 Mod. 251.  
Str. 635.  
2 P. Will. 20.  
2 Burr. 703.  
3 Burr. 1922.

*Sect. 17.* It seems agreed, that it may be discharged by the demise of the (*b*) king in whose reign it was taken, or of the (*c*) principal party who was bound thereby, if it were not forfeited before. Also it hath been holden, that it may be discharged by the (*d*) release of the party at whose complaint it was taken, being certified together with it. But this may justly be questioned, because the recognizance is not to the subject, but to the king, and consequently cannot be discharged by the subject, who is not a party to it. However, such a release will be a good inducement to the court, to which such a recognizance shall be certified, to discharge it; and so also will the non-appearance of the party at whose complaint it was taken, in order to pray the continuance of it. And yet it is said, that the sessions in that case may, in their discretion, refuse to discharge it. However, it is certain that such a recognizance cannot be pardoned, or released by the king, before it is broken, because the subject has a kind of interest in it. And it is said, that the sureties are not discharged by their death, but that their executors, &c. continue bound as their testators, &c. were.

As to the ELEVENTH POINT, *viz.* How such a recognizance ought to be certified and proceeded upon.

Lamb. 111, 115.  
&c.  
Dalt. c. 70.

*Sect. 18.* If it be taken by force of a writ of *supplicavit*, it needs not be certified till the justice receive a writ of *certiorari* to that purpose; but if it be taken upon a complaint below, it must

must be certified, sent, or brought to the next session of the peace by force of 3 Hen. 7. c. 1. that the party so bound may be called; and by the same statute, "If the party then make default, the same default shall be recorded, and the same recognizance, with the record of the default, shall be certified into the chancery, king's bench, or exchequer." However, if the party have any excuse for his not appearing, it seems that the sessions is not bound peremptorily to record his default, but may equitably consider of the reasonableness of such excuse. And it is said, that the sessions cannot in any case proceed against the party for a forfeiture of his recognizance, either in respect of his not appearing or breaking the peace; but that the recognizance in such case ought to be removed into some of the king's courts of Westminster-Hall, who shall proceed by *scire facias* upon such recognizance, and not by indictment, &c.

Hil. 1. Geo. 1.  
K. v. Combs,  
agreed.

Sayer, 253.  
Dalt. c. 71.  
Raym. 169.  
196.  
C. Jac. 598.  
1 R. A. 900.  
Parker, 51.

*Sect. 19.* It seemeth that in a *scire facias* upon such a recognizance, it is sufficient to lay the fact alleged for the breach thereof, as having been done *contra pacem*, without using the words *vi et armis*.

sions was holden, till which the party was bound to keep the peace.

3 Bulst. 120.  
Whether such  
*scire facias* must  
shew the day on  
which the ses-  
sions was holden,  
Cro. Car. 133

As to the TWELFTH POINT, *viz.* How such recognizance may be forfeited.

*Sect. 20.* There is no doubt but it may be forfeited by any actual violence to the person of another, whether it be done by the party himself, or by others through his procurement, as manslaughter, rape, robbery, unlawful imprisonment, &c.

B. Peace, 20.  
Dalt. c. 72.  
Lamb. 127,  
123.  
Sayer, 139.

*Sect. 21.* Also it hath been holden, that it may be forfeited by any treason against the person of the king; and also by any unlawful assembly *in terrorem populi*; and even by words directly tending to a breach of the peace, as by challenging one to fight, or in his presence, threatening to beat him, &c.

books cited in the following section, and 2 R. Abr. 545. Pl. 2, 3, 4, 5, 6, 7, 8. 547. E. 3.

Lamb. 115. &c.  
Dalt. c. 72.  
2 H. 7. 2, seems  
otherwise.  
13 Ed. 1. 28.  
22 Ed. 4. 35.  
C. Car. 498,  
499. See the

*Sect. 22.* However, it seems that it shall not be forfeited by bare words of heat and choler, as the calling a man knave, teller of lies, rascal, or drunkard; for though such words may provoke a choleric man to break the peace, yet they do not directly challenge him to it, nor does it appear that the speaker designed to carry his resentment any farther. And it has been said, that even a recognizance for the good behaviour, shall not be forfeited for such words; from whence it follows *à fortiori*, that a recognizance for the peace shall not.

Sayer, 140.  
C. Eliz. 86.  
Moor, 249.  
2 Roll. 199,  
227.  
Palmer, 126.

*Sect. 23.* Also there are some actual assaults on the person of another, which do not amount to a forfeiture of such a recognizance; as if an (a) officer, having a warrant against one who will not suffer himself to be arrested, beat or wound him in the attempt to take him; or if a (b) parent in a reasonable manner chastise his child, or a master his servant, (c) being actually in his service at the time; or a (d) schoolmaster his scholar, or a (e) gaoler his prisoner, or even a (f) husband his wife, as some

(a) 2 Ed. 3. 6.  
21 H. 7. 39.  
(b) Dalt. c. 72.  
Crom. 136.  
(c) 33 H. 6. 25.  
1 Sid. 176.  
(d) Sum. 31.  
1 Sid. 177.  
21 Ed. 1. 6.  
says; (e) Dalt. c. 72.  
1 Sid. 113 116.

(f) Crom. 28. 136. F. N. B. 80. Hutley, 149. Con.

(a) 22 Ass. 36. say; or if (a) one confine a friend who is mad, and bind and beat him, &c. in such a manner as is proper in such circumstances; or if a man (b) force a sword from one who offers to kill another therewith; or if a man gently lay his hands upon another, and thereby stay him from inciting a dog against a third person; or if (c) I beat one (without (d) wounding him, or throwing at him a dangerous weapon) who wrongfully endeavours with violence to dispossess me of my land, or goods; or the goods of another delivered to me to be kept for him, and will not desist upon my laying my hands gently on him, and disturbing him; or if a man beat, (e) or, as some say, wound, or maim one who makes an assault upon his person, or that of his (f) wife, parent, child, or master, especially if it appear that he did all he could to avoid fighting before he gave the wound; or if a (g) man fight with or beat one who attempts to kill any stranger; or if a man even (h) threaten to kill one who puts him in fear of death in such a place where he cannot safely fly from him; or if one (i) imprison those whom he sees fighting, till the heat is over.

(a) 2 R. A. 546. 22 Ed. 4. 5. (b) C. Jac. 134. 2 R. A. 546. (c) 3 H. 1. 6. 8. Latw. 1433. C. Jac. 236. C. Car. 133. 19 H. 6. 31. 10 E. 1. 6. 11 Ed. 4. 28. Keilw. 92. Yelv. 172. 2 R. A. 517. 548, 549. Pult. 5. 6. Crom. 137. Dalt. c. 72. (d) 2 Roll. Abr. 548. (e) 41 Ass. 21. 27 Ed. 3. 94. 25 Ed. 3. 42. 3 H. 4. 8. 9 Ed. 4. 48. 12 Ed. 4. 6. B. Tort Dem. 57. 1 Sid. 246. Kely. 128. 2 R. Abr. 547. 1 Keo. 884. 921. 2 Inst. 316. (f) 35 H. 6. 50, 51. 10 H. 6. 31, 66. 12 Ed. 4. 6. Crom. 136. Dalt. c. 72. 2 R. Abr. 546. (g) 12 H. 8. 2. (h) 32 H. 6. 98. 10 Ed. 4. 6. (i) 2 R. Abr. 559. 22 E. 4. 45.

(k) 2 R. A. 546. Sect. 24. According to some opinions, a (k) master shall not forfeit such a recognizance for beating another in defence of his servant. But it is said, that a (l) servant is liable to such forfeiture for beating another in defence of his master's son, though he were commanded by the master so to do, because he is not a servant to the son; and for the like reason it is said, that a (m) tenant shall incur the like forfeiture for beating another in defence of his landlord, &c.

19 H. 6. 31, 66. Dalt. c. 72. Crom. 136. Con. 9 Ed. 4. 48. Salk. 407. (l) 9 Ed. 4. 48. B. Tres. 189. (m) Dalt. c. 72. Lamb. 129.

Crom. 136. Dalt. c. 72. C. Eliz. 86. Moo1, 249.

Sect. 25. But it seems agreed, that no one shall forfeit such a recognizance by a bare trespass on another's lands, or goods, unless it be accompanied with some violence to the person.

Sect. 26. And it seems to be the better opinion, that a man is in no danger of such a forfeiture from any hurt done to another by playing at cudgels, or such like sport, by consent, because the intent of the parties seems no way unlawful, but rather commendable, and tending mutually to promote activity and courage. Yet it is said, that he who wounds another in fighting with naked swords, does in strictness forfeit such a recognizance, because no consent can make so dangerous a diversion lawful.

Sect. 27. But it seemeth, that a man shall not forfeit such recognizance, by a hurt done to another merely through negligence, or mischance; as where one soldier hurts another by discharging a gun in exercise, without sufficient caution; for notwithstanding such person must, in a civil action, give the other satisfaction for the damage occasioned by his want of care, yet he seems not to have offended against the purport of such a recognizance, unless he be guilty of some wilful breach of the peace.

Dalt. c. 22.  
B. Co. 229.  
F. Bar. 244.

Hobart. 134.  
2 R. Abr. 346.

*Of Surety for the Good Behaviour.*

And now we are come to surety for the good behaviour, which, being of great affinity with surety of the peace, both as to the manner in which it is to be taken, superseded, and discharged, &c. seems not to require a particular consideration, save only as to the following points :

1. For what misbehaviours it is to be required.
2. For what it shall be forfeited.

As to the FIRST POINT, *viz.* For what misbehaviours surety is required.

*Sect. 1.* It is to be observed, that, by 34 Edw. 3. c. 1. "Justices of peace are empowered to restrain offenders, rioters, and all other barrators, and to pursue, arrest, take, and chastise them, according to their trespass, or offence; and to cause them to be imprisoned, and duly punished according to the laws and customs of the realm, and according to that which to them shall seem best to do by their discretions, and good advice; and also to inform them, and to inquire of all those who have been pillors and robbers in the parts beyond the sea, and be now come again, and go wandering, and will not labour as they were wont in times past, and to take and arrest all those that they may find by indictment or by suspicion, and to put them in prison; and to take of all them that be not of good fame, where they shall be found, sufficient surety and mainprize of their good behaviour towards the king, and his people, and the other duly to punish, to the intent that the people be not by such rioters troubled nor indamaged, nor the peace blemished, nor merchants, nor others passing by the high-ways of the realm disturbed, nor put in the peril which may happen of such offenders."

*Vide* Burlew,  
524.

*Sect. 2.* In the construction hereof there seems to have been some opinions, that the statute, speaking of those that be not of good fame, means only such as are defamed, and justly suspected that they intend to break the peace, and that it does not any way extend to those who are guilty of other misbehaviours not relating to the peace. But this seems much too narrow a construction, since the abovementioned expression of "persons of evil fame," in common understanding, as properly includes persons of scandalous behaviour in other respects, as those who by their quarrelsome behaviour give just suspicion of their readiness to break the peace. And accordingly it seems to have been always the better opinion, that a man may be bound to his good behaviour for many causes of scandal which give him a bad fame, as being contrary to good manners only; as for (a) haunting bawdy-houses with women of bad fame; or for (b) keeping bad women in his own house; or for speaking words of contempt of an inferior (c) magistrate, as a justice of peace, or mayor of a town, &c. though he be not then in the actual execution of his office, or of an inferior officer of justice, as a constable, and such like, being in the actual execution of his office.

4 Inst. 181.  
2 Il. 7. 2, 3.  
13 Il. 7. 10.  
Pulton, 18.

4 Burn, 270.  
Lamb. 115,  
116, 117.  
Dalt. c. 75.  
12 Mod. 566.  
(a) 13 Il. 7. 10.  
(b) Crom. 140.  
(c) C. Eliz. 78.  
1 Levin. 52,  
53, 107.  
11 Co. 98.  
1 Roll. 224.  
Litch. 220.  
Con. C. Eliz.  
689, 449.  
Palmer, 130.  
1 Roll. 227,  
228.  
3 Bulst. 139,  
110.

*Sect.* Cro. Car. 409.

*Sect. 3.* However, it seems the better opinion, that no one ought to be bound (a) to the good behaviour for any rash, quarrelsome, or unmannerly words, unless they either directly tend to a breach of the peace, or to scandalize the government, by abusing those who are intrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore it seems, that he (b) who barely calls another rogue, or rascal, or teller of lies, drunkard, &c. ought not, for such cause, to be bound to the good behaviour.

(a) C. Car. 498, 499.  
(b) C. Eliz. 86.  
Moor, 219.  
2 Roll. 299.  
227.  
Palmer, 126.

Dalt. 75.  
1 Roll. 150.  
2 Ven. 22, 1  
24.

*Sect. 4.* However, I cannot find any certain precise rules for the direction of the magistrate in this respect, and therefore am inclined to think, that he has a discretionary power to take such surety of all those whom he shall have just cause to suspect to be dangerous, quarrelsome, or scandalous, as of those who sleep in the day, and go abroad in the night, and of such as keep suspicious company, and of such as are generally suspected to be robbers, &c. and of eve-droppers, and common drunkards, and all other persons, whose misbehaviour may reasonably be intended to bring them within the meaning of the statute, as persons of evil fame, who, being described by an expression of so great latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want of sureties he must shew the cause, &c. with convenient certainty. (1)

As to the SECOND POINT, *viz.* For what misbehaviours such a recognizance shall be forfeited.

Palmer, 129, 1  
C. Car. 199.

*Sect. 5.* It is laid down as a general rule in the argument of Stamp and Hide's case, that whatever will be a good cause to bind a man to his good behaviour, will forfeit a recognizance for it. Yet this is since denied in Hayward's case; and indeed does by no means seem to be maintainable, because the statute, in ordering persons of evil fame to be bound in this manner, seems in many cases chiefly to regard the prevention of that mischief which they may justly be suspected to be likely to do; and in that respect requires them to secure the public from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them, or not; and it would be extremely hard in such cases to make persons forfeit their recognizance, who yet may justly be compellable to give one, as those who keep suspicious company, or those who spend much money idly without having any visible means of getting it honestly, or those who lie under a general suspicion of being rogues, &c.

13 H. 7. 10.  
Dalt. c. 75.

*Sect.*

(1) Security for good behaviour may be taken: For using opprobrious terms in a court of justice. 1 Lev. 197. Accusing justices of ignorance in the exercise laws. 1 Vent. 16. Publishing an obscene book. Fort. 123. For exciting discontents in the minds of the people. 2 Vent. 24. For offering medicines to destroy a child in the womb. Cro. Eliz. 419. For obstructing another on his necessary way to a court of justice. 2 Lill. Reg. 649. For disturbing a licensed preacher. 1 Mar. s. 2, 3. For unlawful fishing or hunting. 5 Eliz. c. 21.

For neglecting church a month. 23 Eliz. c. 1. For hunting or stealing deer or conies. 1 Jac. 1. c. 18. sed vide 16 Geo. 3. c. 30. And it is a usual part of the judgment in a misdemeanour. 4 Bac. Ab. 698. But a justice of a peace cannot compel the security upon a general information. Str. 16. And whether a person taken upon the warrant of a secretary of state for a libel shall give security for his good behaviour, seems unsettled. 1 Wils. 29. sed vide 2 Wils. 160. and for a very full account of this title, 5 Burn. 293. Chetwynd's Ed.

*Sect. 6.* However, it seems that such a recognizance shall not only be forfeited for such actual breaches of the peace, for which a recognizance for the peace may be forfeited, but also for some others, for which such a recognizance cannot be forfeited; as for going armed with great numbers to the terror of the people, or speaking words tending to sedition, &c. and also for all such actual misbehaviours which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what perhaps may never actually happen.

It may be discharged on motion on producing prosecutor's consent, verified by affidavit. *Hardwicke's cases*, 58. Or consenting by Counsel. *1 Burr.* 703.

## 2. Affrays.

In treating of affrays, I shall consider,

1. What shall be said to be an affray.
2. How far it may be suppressed by a private person.
3. How far by a constable.
4. How far by a justice of peace.
5. In what manner the several kinds of affrays may be punished.

As to the FIRST POINT, *viz.* What shall be said to be an affray.

*Sect. 1.* It is said, that the word "affray" is derived from the French word *effraier*, to terrify, and that, in a legal sense, it is taken for a public offence to the terror of the people. From this definition it seems clearly to follow, that there may be an assault which will not amount to an affray; as where it happens in a private place, out of the hearing or seeing of any, except the parties concerned; in which case it cannot be said to be to the terror of the people; and for this cause such a private assault seems not to be inquirable in a court of law, as all affrays certainly are, as being common nuisances.

*Sect. 2.* Also it is said, that no quarrelsome or threatening words whatsoever shall amount to an affray; and that no one can justify laying his hands on those who shall barely quarrel with angry words, without coming to blows; yet it seemeth, that the constable may, at the request of the party threatened, carry the person, who threatens to beat him, before a justice, in order to find sureties.

*Sect. 3.* Also it is certain, that it is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the messenger of such a challenge, or even barely to endeavour to provoke another to send a challenge, or to fight; as by dispersing letters to that purpose, full of reflections, and insinuating a desire to fight, &c. (1)

## *Sect.*

(1) Challenging another to fight on account of money won by gaming is, by st. 9 Anne, c. 14. made a forfeiture of all the personal estate and imprisonment for two years: vide ante, p. 116.



Lamb. 126.  
3 Inst. 160. 76.  
2 R. Abr. 78.  
Summary, 137.

*Sect. 4.* But granting that no bare words, in the judgment of law, carry in them so much terror as to amount to an affray, yet it seems certain, that in some cases there may be an affray where there is no actual violence; as where a man arms himself with dangerous and unusual weapons, in such a manner as will naturally cause a terror to the people, which is said to have been always an offence at common law, and is strictly prohibited by many statutes.

By 2 Edw. 3. it is enacted, "That no man, great nor small" "of what condition soever he be, except the king's servants in" "his presence, and his ministers in executing of the king's pre-" "cepts, or of their office, and such as be in their company assist-" "ing them, and also upon a cry made for arms to keep the peace," "and the same in such places where such acts happen, be so" "hardy to come before the king's justices, or other of the king's" "ministers doing their office, with force and arms, nor bring no" "force of affray of peace, nor to go nor ride armed by night nor" "by day, in fairs, markets, nor in the presence of the justices or" "other ministers, nor in no part elsewhere, upon pain to forfeit" "their armour to the king, and their bodies to prison, at the" "king's pleasure. And that the king's justices in their presence," "sheriffs, and other ministers in their bailiwicks, lords of fran-" "chises, and their bailiffs in the same, and mayors and bailiffs of" "cities and boroughs, within the same cities and boroughs, and" "borough-holders, constables and wardens of the peace within" "their wards, shall have power to execute this act: and that the" "justices assigned, at their coming down into the country, shall" "have power to inquire how such officers and lords have exer-" "cised their offices in this case, and to punish them whom they" "find that have not done that which pertained to their offices;" and this statute is further enforced by 7 Rich. 2. c. 13. and 20. Rich. 2. c. 1.

And in the exposition of it the following points have been holden :

F. N. B. 249.

3 Inst. 161.  
Dalt. c. 22.  
Lamb. 168, &c.  
Dalis. 23.  
2 Buls. 330.

*Sect. 5.* FIRST, That any justice of peace, or other person who is empowered to execute this statute, may proceed thereon, either *ex officio*, or by force of a writ out of chancery, formed upon the statute, and that if he find any person in arms contrary to the form of the statute, he may seize the arms, and commit the offender to prison; and that he ought also to make a record of his whole proceeding, and certify the same into chancery, where he proceeds by force of the said writ, or into the exchequer, where he proceeds *ex officio*.

C. Eliz. 291.  
Con. Lamb.  
170.

*Sect. 6.* SECONDLY, That where a justice of peace, &c. proceeds upon the said writ, he may not only imprison those whom he shall find offending against the statute in his own view, but also those who shall be found, by an inquest taken before him, to have offended in such manner in his absence. And I do not see why he may not do the same where he proceeds *ex officio*; for seeing the

the said writ hath no other foundation but the said statute, and is the most authentic explication thereof, it seemeth that the rules therein prescribed should be the best direction for all proceedings upon that statute.

*Sect. 7. THIRDLY,* That the under-sheriff may execute the said writ, being directed to the sheriff, if it name him only by the name of his office, and not by his proper name, and do not expressly command him to act in his proper person. C. Eliz. 294.

*Sect. 8. FOURTHLY,* That a man cannot excuse the wearing such armour in public, by alleging that such a one threatened him, and he wears it for the safety of his person from his assault. But it hath been resolved, that no one shall incur the penalty of the said statute for assembling his neighbours and friends in his own house, against those who threaten to do him any violence therein, because a man's house is as his castle. 24 Ed. 3. 33.  
21 H. 7. 39.  
3 Inst. 161.  
Con. 2 Roll. 78.  
2 H. 7. 39.

*Sect. 9. FIFTHLY,* That no wearing of arms is within the meaning of this statute, unless it be accompanied with such circumstances as are apt to terrify the people; from whence it seems clearly to follow, that persons of quality are in no danger of offending against this statute by wearing common weapons, or having their usual number of attendants with them for their ornament or defence, in such places, and upon such occasions, in which it is the common fashion to make use of them, without causing the least suspicion of an intention to commit any act of violence or disturbance of the peace. And from the same ground it also follows, that persons armed with privy coats of mail, to the intent to defend themselves against their adversaries, are not within the meaning of this statute, because they do nothing *in terrorem populi*. 3 Mod. 117.  
2 Bulst. 330.  
  
Crom. 64.

*Sect. 10. SIXTHLY,* That no person is within the intention of the said statute, who arms himself to suppress dangerous rioters, rebels, or enemies, and endeavours to suppress or resist such disturbers of the peace or quiet of the realm; for persons who so arm themselves seem to be exempted out of the general words of the said statute, by that part of the exception, in the beginning thereof, which seems to allow all persons to arm themselves, upon a cry made for arms, to keep the peace, in such places where such acts happen. Pop. 121, 122.

As to the SECOND POINT, *viz.* How far an affray may be suppressed by a private person.

*Sect. 11.* It seems agreed, that any one who sees others fighting may lawfully part them, and also stay them till the heat be over, and then deliver them to the constable, who may carry them before a justice of peace, in order to their finding sureties for the peace. Also it is said, that any private person may stop those whom he shall see coming to join either party; and from hence it seems clearly to follow, that if a man receive a hurt from either party in thus endeavouring to preserve the peace, he shall have his remedy by an action against him. Also upon the same ground, it seems equally reasonable, that if he unavoidably happen to hurt either party in thus doing what the law both allows and commends, Lamb. 131.  
3 Inst. 158.  
2 Inst. 52.  
22 E. 4. 41.  
Dalt. c. 8.  
Lamb. 131.  
Infra, s. 17.  
  
3 Inst. 138.  
Lamb. 131.  
Dalt. c. 8.  
he

he may well justify it, inasmuch as he is no way in fault; and the damage done to the other was occasioned by a laudable intention to do him a kindness.

Lamb. 131.  
Dalt. c. 8.  
3 Inst. 158.  
B. F. Imp. 35.  
44.  
10 H. 7. 20.  
2 Inst. 52.

*Sect. 12.* However it seems clear, that if either party be dangerously wounded in such an affray, and a stander-by, endeavouring to arrest the other, be not able to take him without hurting, or even wounding him, yet he is no way liable to be punished for the same, inasmuch as he is bound, under pain of fine and imprisonment, to arrest such an offender, and either detain him till it appear whether the party will live or die, or carry him before a justice of peace, by whom he either is to be bailed or committed, &c.

As to the **THIRD POINT**, *viz.* How far an affray may be suppressed by a constable.

3 Inst. 158.  
Lamb. 132, 133.  
Dalt. c. 8.  
3 H. 7. 10.

*Sect. 13.* It seems agreed, that a constable is not only empowered, as all private persons are, to part an affray which happens in his presence, but is also bound at his peril to use his best endeavours to this purpose; and not only to do his utmost himself, but also to demand the assistance of others, which if they refuse to give him, they are punishable with fine and imprisonment.

Lamb. 132, 133.  
Dalt. c. 1. 8.  
B. Surety, 23.  
36.  
C. Eliz. 375.  
9 Ed. 4. 26.  
Moor, 284.  
3 H. 4. 9.  
22 E. 4. 35.  
10 Ed. 4. 18.  
5 H. 7. 6.  
Sav. 97, 98.

*Sect. 14.* And it is said, that if a constable see persons either actually engaged in an affray, as striking, or offering to strike, or drawing their weapons, &c. or upon the very point of entering upon an affray, as where one shall threaten to kill, wound, or beat another, he may either carry the offender before a justice of the peace, to the end that such justice may compel him to find sureties for the peace, &c. or he may imprison him of his own authority for a reasonable time, till the heat shall be over, and also afterwards detain him till he find such surety by obligation. But it seems, that he has no power to imprison such an offender in any other manner, or for any other purpose; for he cannot justify the committing an affrayer to gaol till he shall be punished for his offence; and it is said, that he ought not to lay hands on those who barely contend with hot words, without any threats of personal hurt, and that all which he can do in such a case, is to command them under pain of imprisonment to avoid fighting.

5 H. 7. 6.  
1 Roll. 238.  
2 Bulst. 329.

*Sect. 15.* But he is so far intrusted with a power over all actual affrays, that though he himself is a sufferer by them, and therefore liable to be objected against, as likely to be partial in his own cause, yet he may suppress them; and therefore, if an assault be made upon him, he may not only defend himself, but also imprison the offender, in the same manner as if he were no way a party.



13 Ed. 4. 9.  
7 Ed. 3. 12.  
Dalt. c. 8. 67.  
Lamb. 133, 134.

*Sect. 16.* And if an affray be in a house, the constable may break open the doors to preserve the peace; and if affrayers fly to a house, and he follow with fresh suit, he may break open the doors to take them.

*Sect.*

*Sect. 17.* But it is said, that a constable hath no power to arrest a man for an affray done out of his own view, without a warrant from a justice of peace, unless a felony were done or likely to be done; for it is the proper business of a constable to preserve the peace, not to punish the breach of it; nor does it follow from his having power to compel those to find sureties who break the peace in his presence, that he has the same power over those who break it in his absence, inasmuch as in such case it is most proper to be done by those who may examine the whole circumstances of the matter upon oath, which a constable cannot do; yet it is said that he may carry those before a justice of peace, who were arrested by such as were present at an affray, and delivered by them into his hands.

C. Eliz. 375.  
Owen, 105.

Lamb. 131.  
Dalt. c. 8.

As to the *FOURTH POINT*, viz. In what manner an affray may be suppressed by a justice of peace.

*Sect. 18.* There is no doubt but that he may and must do all such things to that purpose, which a private man or constable are either enabled, or required by the law to do. But it is said, that he cannot without a warrant authorize the arrest of any person for an affray out of his view. Yet it seems clear, that in such case he may make his warrant to bring the offender before him, in order to compel him to find sureties for the peace.

Summary, 136.  
Dalt. c. 8.  
B. F. Inq. 6.  
12. 33.  
14 H. 8. 7.  
Moor, 468.

*Sect. 19.* Also it seems, that a justice of peace has a greater power over one who has dangerously wounded another in an affray, than either a private person or a constable; for there does not seem to be any good authority, that these have any power at all to take sureties of such an offender; but it seems certain, that a justice of the peace has a discretionary power either to commit him, or to bail him, till the year and day be past; but it is said, that he ought to be very cautious how he takes bail, if the wound be dangerous: for that if the party die, and the offender appear not, he is in danger of being severely fined, if he shall appear, upon the whole circumstances of the case, to have been too favourable.

See 38 Ed. 3.  
6. 7.

22 Ass. 56.  
5 Mod. 84.

Summary, 36.  
Dalt. c. 8.  
Popham, 153.

As to the *FIFTH POINT*, viz. In what manner the several kinds of affrays are to be punished.

*Sect. 20.* It sufficiently appears from the foregoing part of this chapter, how such affrays as are accompanied with force and arms are to be dealt with upon the statute of Northampton. And therefore I shall only examine in this place, what penalties other affrays are liable unto.

As to which it is to be observed, that all affrays in general are punished by fine and imprisonment, the measure of which is to be regulated by the discretion of the judges, according to the circumstances of the case, which very much vary the nature of this crime, and in some cases make it so inconsiderable as scarce to deserve to be taken notice of; and in others make it an offence of a very heinous nature.

Aleyn, 9.

As in the following instances: *FIRST*, In respect to the dangerous

gerous tendency thereof. **SECONDLY**, In respect of the persons against whom it is committed. **THIRDLY**, In respect of the place wherein it happens.

Popham, 153.  
3 Inst. 158.

1 Sid. 186.  
1 Keb. 694.

Moor, 563.

*Sect. 21.* And **FIRST**, An affray may receive an aggravation from the dangerous tendency thereof; as where persons coolly and deliberately engage in a duel, which cannot but be attended with the apparent danger of murder, and is not only an open defiance of the law, but carries with it a direct contempt of the justice of the nation, as putting men under a necessity of righting themselves; upon which considerations, persons convicted of barely sending a challenge have been adjudged to pay a fine of one hundred pounds, and to be imprisoned for one month without bail, and also to make a public acknowledgment of their offence, and to be bound to their good behaviour.

*Sect. 22.* **SECONDLY**, An affray may receive an aggravation from the persons against whom it is committed; as where the officers of justice are violently disturbed in the due execution of their office, as by the rescous of a person legally arrested, or the bare attempt to make such a rescous; for all the ministers of the law are under its more immediate protection.

12 Co. 101.  
1 Keb. 290.  
491.  
1 Mod. 186.

*Sect. 23.* **THIRDLY**, An affray may receive a further aggravation from the place wherein it is committed; and upon this respect all affrays in the king's court are so severely punished, as hath been shewn in Chapter 6. Upon the same account also, all affrays in a church or church-yard have been always esteemed very heinous offences, as being very great indignities to the Divine Majesty, to whose worship and service such places are immediately dedicated. And upon this consideration, all irreverent behaviour in these places hath been esteemed so criminal by the makers of our laws, that they have not only severely punished such disturbances in them which are punishable wherever they happen, as all actual affrays, &c. but also such which, if they happen elsewhere, are not punishable at all, as bare quarrelsome words, and even such which be commendable if done in another place, as arrests by virtue of legal process.

But for the better understanding hereof, I shall consider the several statutes made for this purpose.

The offence of making an affray in a church or church-yard.

*Sect. 24.* And first, it is enacted by 5 and 6 Edw. 6. c. 4. "That if any person whatsoever shall, by words only, quarrel, chide, or brawl, in any church or church-yard, that then it shall be lawful unto the ordinary of the place where the same offence shall be done, and proved by two lawful witnesses, to suspend every person so offending; that is to say, if he be a layman, *ab ingressu ecclesie*, and if he be a clerk, from the ministration of his office, for so long a time as the same ordinary shall by his discretion think meet and convenient, according to the fault."

*Sect. 25.* And it is further enacted by the said statute, "That if any person shall smite or lay any violent hands upon any other

“ other, either in any church or church-yard, that then, *ipso facto*,  
 “ every person so offend” shall be deemed excommunicate  
 “ and be excluded from fellowship company of Christ’s  
 “ congregation.”

*Sect. 26.* And it is also further enacted by the said statute,  
 “ That if any person shall maliciously strike any person with  
 “ any weapon in any church or church-yard, or shall draw any  
 “ weapon in any church or church-yard, to the intent to strike  
 “ another with the same weapon, that then every person so of-  
 “ fending, and thereof being convicted by verdict of twelve men,  
 “ or by his own confession, or by two lawful witnesses, before  
 “ the justices of assize, justices of *oyer* and *terminer*, or justices  
 “ of peace in their sessions, by force of this act, shall be ad-  
 “ judged by the same justices before whom such person shall be  
 “ convicted, to have one of his ears cut off, &c. and besides that  
 “ every such to be, and stand, *ipso facto* excommunicated, as  
 “ aforesaid.”

*Sect. 27.* And in the exposition hereof it hath been holden :

FIRST, That notwithstanding the words of the statute be expressed, that he who smites another in the church, &c. shall, *ipso facto*, be deemed excommunicate, yet there ought either to be a precedent conviction at law, which must be transmitted to the ordinary, or else the excommunication must be declared in the spiritual court upon a proper proof of the offence there ; for it is implied in every penal law, that no one shall incur the penalty thereof, till he be found guilty upon a lawful trial. Also it must be intended in the construction of this statute, that the excommunication ought to appear judicially, for otherwise there could be no absolution.

Dyer, 275.  
 C. Jac. 462.  
 1 Ven. 146.  
 Lit. 149.  
 Hetl. 86.  
 C. Eliz. 919.  
 1 Burr. 240.  
 2 Id. Ray. 850.  
 10 Mod. 65.  
 179.  
 1 Ventris, 146.  
 B. R. H. 179.  
 680. 221.  
 B. Prohib. 14.

*Sect. 28.* SECONDLY, That he who strikes another in a church, &c. can no way excuse himself, by shewing that the other assaulted him.

C. Jac. 367.  
 C. Car. 167.  
 Nov. 171. See  
 Wynne’s Eu-  
 nomus, 3 vol. 46, 47.

*Sect. 29.* THIRDLY, That churchwardens, or perhaps private persons, who whip boys for playing in the church, or pull off the hats of those who obstinately refuse to take them off themselves, or geudy lay their hands on those who disturb the performance of any part of divine service, and turn them out of the church, are not within the meaning of the statute. (1)

1 Saund. 13, 14.  
 1 Sid. 301.  
 3 Keb. 124.  
 1 Mod. 168.

*Sect. 30.* Also it is enacted by 1 Mary, sess. 2. c. 3. “ That if  
 “ any person or persons, of their own power and authority, shall  
 “ willingly and of purpose by open and overt word, fact, act, or  
 “ deed, maliciously or contemptuously molest, let, disturb, vex  
 “ or

The offence of  
 disturbing di-  
 vine worship.

(1) This act contains three distinct clauses levelled against three distinct offences in churches and church-yards. First, quarrelling, chiding, or brawling by words only. Secondly, smiting or laying violent hands. Thirdly, striking with a weapon; or drawing one with intent to strike. With respect to the two first offences the Ecclesiastical Court may proceed without any previous

conviction at common law. But for the last offence, viz. striking with a weapon, or drawing one with intent to strike, though the party is declared, *ipso facto*, excommunicated, yet there must be a previous conviction at common law, and transmitted to the Ordinary before the sentence of excommunication is pronounced. 1 Burr. 243.

Sacrilegious  
affrays.

"or trouble, or by any other unlawful ways and means, disquiet, or misuse, any preacher who shall be licensed, allowed, or authorized to preach by the queen's highness, or by any archbishop, or bishop of this realm, or by any other lawful ordinary, or by any of the universities of Oxford and Cambridge, or otherwise lawfully authorized or charged, by reason of his or their cure, benefice, or other spiritual promotion or charge, in any of his, or their open sermon, &c. or if any person or persons shall maliciously, willingly, or of purpose, molest, let, disturb, vex, disquiet, or otherwise trouble any parson, vicar, parish-priest, or curate, or any lawful priest, preparing, saying, doing, singing, ministering or celebrating the mass, or other such divine service, sacraments, or sacramentals, as was most commonly frequented and used in the last year of the reign of the late sovereign lord king Henry the Eighth, or that at any time hereafter should be set, allowed, set forth, or authorized by the queen's majesty; or if any person or persons shall unlawfully, contemptuously, of their own power or authority, pull down, deface, spoil, or otherwise break any altar, or altars, or any crucifix, or cross, in any church, chapel, or church-yard; every such offender and offenders, his or their aiders, procurers, or abettors, may be apprehended by any constable, or churchwarden of the place where such offence shall be committed, or by any other officer or person then being present at the time of the said offence; and being so apprehended shall be brought before some justice of peace, by whom they shall be committed forthwith, and within six days the matter shall be examined by the same, together with some other justices; and on proof by two witnesses, or confession, the offender shall be committed for three months, and also till the next quarter sessions, where, if they repent, they shall be discharged upon giving sureties for their good behaviour for a year, and if they do not repent they shall be committed till they do."

2 Jon. 139.  
Com. Aleyn, 50.  
2 Bulst. 51.

*Sect. 31.* It hath been resolved, that the disturbance of a minister in saying the present common prayer is within this statute; for the express mention of such divine service as should afterwards be authorized by queen Mary, doth implicitly include such also as should be authorized by her successors; for since the king never dies, a prerogative given generally to one, goes of course to others.

The offence of  
disturbing a  
dissenting con-  
gregation.

*Sect. 32.* Also it is enacted by 1 Will. and Mary, c. 18. s. 19. "That if any person shall willingly and of purpose, maliciously or contemptuously come into any cathedral or parish-church, chapel, or other congregation permitted by the said act, and disquiet or disturb the same, or misuse any preacher or teacher, such persons, upon proof before any justice of peace, by two or more sufficient witnesses, shall find two sureties to be bound by recognizance in the penal sum of fifty pounds, and on default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions, and upon conviction of the said offence, at the said general or quarter sessions, shall suffer the pain and penalty of twenty pounds."

† *Sect.*

† *Sect. 33.* By 31 Geo. 3. c. 32. s. 10. the same is enacted Offence of disturbing Catholic who shall conform to the di-rections of this statute, is particularly set forth in the former part of this work. Ante, p. 384.

### 3. Of Forcible Entries and Detainers.

It seems that, at the common law, a man disseised of any lands, or tenements, (if he could not prevail by fair means,) might lawfully regain the possession thereof by force, (1) unless he were put to a necessity of bringing his action, by having neglected to re-enter in due time. Lamb. 135. Dalt. c. 76. Crom. 70.

*Sect. 1.* And it seems certain that even at this day, he who is wrongfully dispossessed of his goods, may justify the retaking of them by force from the wrong-doer, if he refuse to redeliver them; for the violence which happens through the resistance of the wrongful possessor, being originally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought. Keilw. 92. Yelv. 172. C. Jac. 236. Co. Lit. 134. Hal. Annual. 346. 3 Comm. 4, 5.

*Sect. 2.* But this indulgence of the common law, in suffering persons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the public peace, by giving an opportunity to powerful men, under the pretence of feigned titles, forcibly to eject their weaker neighbours, and also by force to retain their wrongful possessions; it was thought necessary by many severe laws to restrain all persons from the use of such violent methods of doing themselves justice.

*Sect. 3.* However, even at this day, in an action of forcible entry grounded on those laws, if the defendant make himself a title which is found for him, he shall be dismissed without any inquiry concerning the force. For howsoever he may be punishable at the king's suit, for doing what is prohibited by statute, 17 H. 7. 17. 21 H. 6. 39. F. N. B. 249. B. Force, 5. 11. 29.

as

(1) This dictum of Hawkins has been questioned. It is said that an indictment at common law will lie for a forcible entry. From which it necessarily follows that such forcible entry is illegal at common law: see the case of *R. v. J. Scott*, 3 Burr. 1698. In a subsequent case of the *King v. Wilson*, 8 T. R. 357, which was an indictment at common law against twelve persons for *unlawfully* with force and arms, injuriously, and *with a strong hand*, having entered into a certain mill, and in the possession of one M. Lewis, and him, the said M. Lewis, from the possession of the said premises, *unlawfully*, injuriously, and *with a strong hand*, expelling him therefrom, and upon demurrer it was objected, that the facts as disclosed in this count amounted but to a trespass, and not an indictable offence. It was admitted that, if the indictment had only charged the entry to have been *vi et armis*, that it would only have amounted to a trespass, as implying no more force than the constructive force which is implied in every tortious entry upon the land of another. But it was said that the

words *manu forti*, and the entry being stated to have been made by twelve persons, shewed such actual force as amounted to a breach of the peace, and that the facts so charged amounted to an indictable offence. And it was so held by the court. The determination, however, did not seem to be quite satisfactory judging from the report of the case; for, on a subsequent day in the Term, Lord Kenyon again adverted to the case, and said, "Perhaps some doubts may hereafter arise, respecting what Mr. Serjeant Hawkins said, that at common law the party may enter with force into that to which he had a legal right. But without giving any opinion upon this dictum, one way or the other, but leaving it to be proved or disproved, whenever that question shall arise; all we wish to say is, that in our opinion this case leaves that question untouched—it appearing, by this indictment, that the defendants *unlawfully* entered, and therefore the court cannot intend that they had any title."



as a contemner of the laws and disturber of the peace, yet he shall not be liable to pay any damages for it to the plaintiff, whose injustice gave him the provocation in that manner to right himself.

*Sect. 4.* Since therefore offences of this nature are made such, not by the common law but by statute, I shall, for the better understanding thereof, consider the several statutes relating to this subject.

3 Inst. 161.  
Crom. 162.  
Dalt. c. 80.

*Sect. 5.* And first, I find it agreed, that by 2 Edw. 3. which is commonly called the Statute of Northampton, if there be any use made of arms to strike a terror into the persons upon whom a forcible entry is made, any justice of peace, or other officer, who is within the purview of that statute, may both seize the arms for the king's use, and also imprison the offenders, but not restore the party injured to his possession; but the said statute having been fully set forth in the foregoing title "Affray," I shall proceed to those statutes which more directly relate to this matter.

*Sect. 6.* And first, it is enacted by 5 Rich. 2. c. 7. in the following words: "And also the king defendeth, that none from henceforth make any entry into any lands and tenements, but in case where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner. And if any man from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by imprisonment of his body, and thereof ransomed at the king's will."

*Sect. 7.* But this statute being found by experience not sufficiently to have provided against the mischief intended to be redressed by it, inasmuch as it gave no speedy remedy to the party injured against the wrong-doer, but left him to the common course of proceeding by way of indictment or action, and made no provision at all against forcible detainers, it was thought necessary to supply these defects by other additional laws.

And to this purpose it was further enacted by 15 Rich. 2. c. 2. "That the said statute, and all others made against forcible entries, &c. shall be fully executed: and further, that at all times that such forcible entries shall be made, and complaint thereof cometh to the justices of peace, or to any of them, that the same justices or justice take sufficient power of the county, and go to the place where the force is made; and if they find any that hold such place forcibly, after such entry made, they shall be taken and put in the next gaol, there to abide convict by the record of the same justices or justice, until they have made fine and ransom to the king. And that all the people of the county, as well the sheriff as others, shall be attendant upon the same justices, to go and assist the same justices to arrest such offenders, upon pain of imprisonment, and to make fine to the king; and in the same manner it shall be done of them that make such forcible entries in benefices or offices of holy church."

*Sect.*

**Sect. 8.** In the exposition of this statute it hath been holden, that one justice of peace may make a record of such a forcible holding, and that such record is not traversable, because the justice of peace, in making thereof, acts not as a minister but as a judge.

Also it hath (a) lately been solemnly resolved in Colonel Leighton's Case, that the same justice may assess the fine for this offence, either before the time of conviction, or after; but it is said, that such justice of peace hath no power to commit the offender to gaol, unless he do it immediately upon the fact, or unless the offender shall afterwards refuse to find sureties for his good behaviour.

8 Co. 121.  
Dalt. c. 22.  
Lamb. 151.  
(a) B. R. Hill,  
1708.  
Salkeld, 353.  
Kielw. 41. B.  
Crown. 195, 196.  
Dalt. c. 22.  
Moor, 848. See  
Rex v. Elwell,  
Hil. 1. Geo. 2.

Stra. 794. Id. Raym. 1515.

Also it was holden by the court in Leighton's Case above-mentioned, that if a person, against whom a complaint shall be made as having been guilty of a forcible entry, shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse, for it is impossible to determine it upon view; and if the justice have no power to try it, it would be easy for any one to elude the statute by the tender of such a traverse, and therefore by a necessary construction, the justice must needs have this power, as incidental to what is expressly given him.

Salkeld, 353.  
2 L. Ray, 1514.  
2 Strange, 791.  
Bar. K. B. 30.  
38, 39.  
Sess. Cas. 289.

**Sect. 9.** But this statute being likewise very defective in many respects, as in not giving any remedy against those who were guilty of a forcible detainer after a peaceful entry; nor even against those who were guilty of both a forcible entry and a forcible detainer, if they were removed before the coming of a justice of peace; and in not giving the justices of the peace any power to restore the party injured by such force to his possession; and also in not fixing any pain on the sheriff for not obeying the precepts of the justices in the execution of the said statutes; it was further enacted by 8 Hen. 6. c. 9. "That from henceforth where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made within the same county where such entry is made, to the justices of the peace, or to one of them, by the party grieved, that the justices or justice so warned, within a convenient time shall cause, or one of them shall cause, the said statute to be duly executed, and that at the costs of the party so grieved."

**Sect. 10.** And it is further enacted by the said statute, "That though such persons making such entries be present, or else departed before the coming of the said justices or justice, notwithstanding the same justices or justice in some good town next to the tenements so entered, or in some other convenient place according to their discretion, shall have, and either of them shall have, authority and power to inquire by the people of the same county, as well of them that make such forcible entries in lands and tenements, as of them which the same hold with force. And if it be found before any of them, that any doth contrary to this statute, then the said justices or justice shall cause to

"rescize

“re seize the lands and tenements so entered or holden as afore,  
 “and shall put the party so put out in full possession of the  
 “same lands and tenements, so entered or holden as before.”

*Sect. 11.* And it is further enacted by the said statute, “That  
 “when the said justices or justice make such inquiries as before,  
 “they shall make, or one of them shall make, their warrants and  
 “precepts to be directed to the sheriff of the same county, com-  
 “manding him of the king’s behalf, to cause to come before  
 “them, and every of them, sufficient and different persons,  
 “dwelling next about the lands so entered as before, to inquire  
 “of such entries, whereof every man which shall be impanelled  
 “to inquire into this behalf, shall have land or tenement of the  
 “yearly value of forty shillings by the year, at the least, above  
 “reprises, and that the sheriff return issues upon every of them  
 “at the day of the first precept returnable, twenty shillings, and at  
 “the second day forty shillings, and at the third time an hundred  
 “shillings, and at every day after the double. And if any sheriff  
 “or Lailiff within a franchise, having return of the king’s writ, be  
 “slack, and make not execution duly of the said precepts to him  
 “directed to make such inquiries, that he shall forfeit to the  
 “king twenty pounds for every default, and moreover shall make  
 “fine and ransom to the king. And that as well the justices or  
 “justice aforesaid, as the justices of assize, shall have power to  
 “hear and determine such defaults of the said sheriffs and bai-  
 “liffs, at the suit of the king, or of the party grieved, &c.”

*Sect. 12.* And it is further enacted by the said statute, “That  
 “mayors, justices or justice of peace, sheriffs and bailiffs of  
 “cities, towns, and boroughs, having franchise, have in the said  
 “cities, towns, and boroughs, like power to remove such entries,  
 “and in other articles aforesaid, rising within the same, as the  
 “justices of peace, and sheriffs in counties and countries afore-  
 “said have.”

*Sect. 13.* But it is provided by the said statute, “That they  
 “who keep their possessions with force in any lands and tene-  
 “ments, whereof they or their ancestors, or they whose estate  
 “they have in such lands and tenements, have continued their  
 “possessions in the same by three years or more, be not endea-  
 “voured by force of this statute.”

*Sect. 14.* And the said proviso was further enforced and ex-  
 “plained by 31 Eliz. c. 11. by which it is declared and enacted,  
 “That no restitution upon any indictment of forcible entry, or  
 “holding with force, be made to any person, if the person so  
 “indicted hath had the occupation, or been in quiet possession,  
 “for the space of three whole years together, next before the day  
 “of such indictment so found, and his estate therein not ended;  
 “which the party indicted may allege for stay of restitution, and  
 “restitution to stay till that be tried, if the other will deny or  
 “traverse the same. And if the same allegation be tried against  
 “the same person so indicted, he is to pay such costs and da-  
 “mages to the other party, as shall be assessed by the judges or  
 “justices before whom the same shall be tried; the same costs  
 “and

“ and damages to be recovered and levied, as is usual for costs  
 “ and damages contained in judgments upon other actions.”

*Sect. 15.* In the construction of these statutes it was holden, Crom. 161. 166. that if a lessee for years, or copyholder, be ousted, and the lessor, or lord, disseised, and such ouster, as well as disseisin, be found in an indictment of forcible entry, the court may in their discretion award a restitution of possession to such lessee or copyholder; which was, by necessary consequence, a reseisin of the freehold also, whether the lessor or lord had desired or opposed it. Yelv. 81. Com. 1 Leon. 327. But it was a great question, whether a lessee for years, or a copyholder, being ousted by the lessor or lord, could have a restitution of their possession within the equity of 8 Hen. 6. the words whereof as to this purpose are, “ that the justice shall re- Lamb. 155. Crom. 71. Dalt. c. 77. Savil, 68. Faurel, 123. seize the lands, &c.” by which it seems to be implied, that the party must be ousted of such an estate therein, whereof he may be said to be seised, which must be a freehold at least.

*Sect. 16.* But to remove this doubt, it is enacted 21 Jac. 1. c. 15. “ That such judges, justices, or justice of the peace, as, “ by reason of any act or acts of parliament then in force, were “ authorized and enabled, upon inquiry, to give restitution of “ possession unto tenants of any estate of freehold, of their lands “ or tenements, which shall be entered upon with force, or from “ them withholden by force, shall, by reason of that act, have the “ like and the same authority and ability from henceforth (upon “ indictment of such forcible entries, or forcible withholding be- “ fore them duly found) to give like restitution of possession unto “ tenants for term of years, tenants by copy of court-roll, guar- “ dian by knight's-service, tenants by *elegit*, statute-merchant “ and staple, of lands or tenements, by them so holden, which “ shall be entered upon by force, or holden from them by force.”

*Sect. 17.* But it hath been holden, that a tenant by the verge Latch, 182. See Co. Lit. 61. is not within this statute, because he is not within the express words: *sed quere*; for since such person hath no other evidence of his title but by the copy of court-roll, he seems at least to be within the meaning, if not within the words of the statute. However it seems clear, that if a lessor eject his lessee for years, and afterwards he forcibly put out of possession again by such lessee, he hath no remedy for a restitution by force, of any of the above-mentioned statutes; for he cannot have it by 8 Hen. 6. because Vide Salk. 587. Crom. 71. 166. Dalt. c. 77. he always continued seised of the freehold, and clearly he is not within 21 Jac. 1. c. 15.

*Sect. 18.* However, there seems to be no doubt but that a justice of peace, &c. may, in either of the said cases, remove the force, and commit the offender, &c. Lamb. 155. Crom. 71. Dalt. c. 75. 2 Keb. 495.

*Sect. 19.* Having thus set forth the several statutes relating to this subject, together with the mischiefs which occasioned them, and the several defects of each of them, I shall, for the better understanding of them all in general, proceed to examine the following particulars:

1. What shall be esteemed an entry within these statutes.

2. What entry is to be adjudged forcible.
3. What detainer shall be adjudged forcible.
4. In respect of what kind of possessions one may be guilty of such forcible entry or detainer.
5. What persons may be guilty thereof.
6. What ought to be the form of a record grounded upon these statutes.
7. Of what kind of possessions a restitution is to be awarded.
8. To whom such restitution ought to be made.
9. By whom, and in what manner, it is to be awarded and given.
10. In what cases it may be barred by the continuance of a possession for three years.
11. For what other causes it may be stayed.
12. How it may be superseded before it is executed.
13. How it may be set aside after it is executed.

As to the FIRST POINT, *viz.* What shall be esteemed an entry within these statutes.

Crom. 70.  
Dalt. c. 77.

*Sect. 20.* It seems certain, that if one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church, or market, or for such like purpose, without doing any act, which either expressly or impliedly amounts to a claim of such lands, he cannot be said to make an entry thereinto within the meaning of these statutes.

Crom. 69.  
Dalt. c. 77.  
Com. C. Car.  
486.  
2 Com. Dig.  
363.

*Sect. 21.* Yet in such case, if he make an actual claim with any circumstances of force or terror, he seems to be guilty of a forcible entry within 1 and 15 Rich. 2. whether his adversary actually quit his possession or not.

Crom. 69.  
Dalt. c. 77.  
B. 2. c. 29. s. 4.

*Sect. 22.* Also all those who accompany a man when he makes a forcible entry shall be adjudged to enter with him, within the intent of these laws, whether they actually came upon the lands, or not.

Crom. 69.  
Dalt. c. 77.  
Co. Lit. 256.

*Sect. 23.* So also shall those who, having an estate in land by a defeasible title, continue with force in the possession thereof, after a claim made by one who had a right of entry thereto.

Crom. 69.  
Dalt. c. 77.  
2 Il. 7. 16.

*Sect. 24.* But he who barely agrees to a forcible entry made to his use, without his knowledge or privity, shall not be adjudged to make an entry within these statutes, because he no way concurred in or promoted the force.

As to the SECOND POINT, *viz.* What entry is to be adjudged forcible.

Lamb. 140. &c.  
Dalt. c. 77.

*Sect. 25.* It seems clear that it ought to be accompanied with some circumstances of actual violence or terror; and therefore that

that an entry which had no other force than such as is implied by the law in every trespass whatsoever, is not within these statutes.

Co. Lit. 257.  
Hale, 138.  
1 Sid. 101.  
1 Lev. 90.

And therefore, for the better understanding hereof, I shall consider,

1. In respect of what acts of violence an entry may be adjudged forcible.

2. In respect of what circumstances of terror.

As to the first of these particulars, *viz.* In respect of what acts of violence an entry may be adjudged forcible.

*Sect. 26.* It seems to be agreed, that an entry may be said to be forcible not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession, but also in respect of any other kind of violence in the manner of the entry, as by breaking open the doors of a house, whether any person be in it at the same time or not, especially if it be a dwelling-house, (*a*) and perhaps also by any act of outrage after the entry, as by carrying away the party's goods, (*b*) &c. which being found in an *assise of novel disseisin*, will make the defendant a disseisor with force, and subject him to fine and imprisonment. And, according to some opinions, an entry may be said to be forcible from the bare drawing up of a latch, or pulling back the bolt of a door; but surely such inconsiderable circumstances as these, which commonly pass between neighbour and neighbour, without any offence at all, can never bring a man within the meaning of these statutes, which speak of entries with strong hand, or multitude of people: and it hath been holden, that an entry into a house through a window, or by opening a door with a key, is not forcible. And it is said, that if one find a man out of his house, and forcibly withhold him from returning to it, and send persons to take peaceable possession thereof, in the party's absence, yet he is not guilty of a forcible entry, inasmuch as he did no violence to the house, but only to the person of the other. But perhaps this opinion may justly be questioned, because though the force be not actually done upon the land, nor in the very act of the entry, yet since it is used with an immediate intent to make such entry, and is the only cause it met with no opposition, surely it cannot be said that the entry is without force, which, whether it be upon or off the land, seems equally within the statute.

Sum. 116. 138.  
1 Roll. 2.  
Noy, 136, 137.  
(*a*) See *Rex v. Bathurst*,  
3 Burr. 1732.  
(*b*) See *Rex v. Jobson*,  
3 Burr. 1702.  
*notis.*  
30 Ass. 50.  
11 H. 4. 16, 17.  
2 Inst. 235,  
236.  
Dalt. c. .  
Crom. 70.  
Moor, 636.  
Lamb. 143.

As to the second particular, *viz.* In respect of what circumstances of terror an entry may be adjudged forcible.

*Sect. 27.* It is to be observed, that wherever a man, either by his behaviour or speech, at the time of his entry, gives those who are in possession of the tenements which he claims, just cause to fear that he will do them some bodily hurt, if they will not give way to him, his entry is esteemed forcible, whether he cause such a terror by carrying with him such an unusual number of servants, or by arming himself in such a manner, as plainly intimates a design to back his pretensions by force, or by actually threatening to kill, maim, or beat those who shall continue in possession, or by giving out such speeches as plainly imply

Summary, 128.  
Lamb. 142, &c.  
Dalt. c. 77.

10 H. 7. 12.  
Crom. 69.

See the books  
above cited.

imply a purpose of using force against those who shall make any resistance; as if one say that he will keep his possession in spite of all men, &c.

B. Duress, 12.  
16.  
1 Inst. 253.  
Dalt. c. 77.

*Sect. 28.* But it seemeth that no entry shall be judged forcible from any threatening to spoil another's goods, or to destroy his cattle, or to do him any other such like damage which is not personal.

Lamb. 143.

*Sect. 29.* However, it is clear, that it may be committed by a single person as well as by twenty.

As to the THIRD POINT, viz. What detainer is to be adjudged forcible.

Summary, 136.

*Sect. 30.* It seemeth certain, that the same circumstances of violence or terror, which will make an entry forcible, will make a detainer forcible also: from whence it seems to follow, that whoever keeps in his house an unusual number of people, or unusual weapons, or threatens to do some bodily hurt to the former possessor, if he dare return, shall be adjudged guilty of a forcible detainer, though no attempt be made to re-enter; and it hath been said, that he also shall come under the like construction, who places men at a distance from the house, in order to assault any one who shall attempt to make an entry into it; and that he also is in like manner guilty who shuts his doors against a justice of peace coming to view the force, and obstinately refuses to let him come in: but it is said, that a man ought not to be adjudged guilty of this offence, for barely refusing to go out of a house, and continuing therein in despite of another.

Lamb. 145.  
Crom. 70, 73.  
Summary, 139.  
Dalt. c. 77.  
C. Jac. 199.

As to the FOURTH POINT, viz. In respect of what kind of possessions one may be guilty of a forcible entry or detainer within those statutes.

*Sect. 31.* It seems clear, that one may come within the danger thereof by a force done to ecclesiastical possessions, as (*a*) churches (*b*) vicarage-houses &c. as much as if the same were done to any temporal inheritance. Also it hath been holden for a general rule, that one may be indicted for a forcible entry into any such incorporeal hereditament, for which a (*c*) writ of entry will lie, either by the common law, as for (*d*) rent, or by statute, as for (*e*) tithes, &c. But I do not find any good authority, that such an indictment will lie for a (*f*) common or (*g*) office; but it seems agreed, that an indictment of forcible detainer lies against any one, whether he be the terre-tenant or a stranger, who shall forcibly disturb the lawful (*h*) proprietor in the enjoyment of any of the above-mentioned possessions; as by violently resisting a lord in his distress for a rent, or by menacing a commoner with bodily hurt, if he dare put in his beasts into the common, &c. Yet it seems clear, that no one can come within the danger of these statutes by a violence offered to another in respect of a way, or such like easement, which is no possession. Also it seemeth, that a man cannot be convicted upon view, by force of 15 Rich. 2. of a forcible detainer of any such tenement, wherein he cannot be said to have made a precedent forcible entry,

(*a*) 1 Inst. 191.  
1 Lev. 20.  
1 Keb. 153.  
(*b*) C. Jac. 41.  
(*c*) C. Car. 201.  
(*d*) 20 H. 6. 11.  
22 H. 6. 33.  
B. Force, 7.  
C. Car. 201.  
(*e*) C. Car. 201.  
(*f*) C. Car. 48.  
Dalt. c. 77.  
(*g*) C. Jac. 18.  
(*h*) Crom. 59.  
Lamb. 144.  
Dalt. c. 77.

1 Mod. 75.  
2 Keb. 709.

entry, because that statute gives the justices a jurisdiction of no other forcible detainer, but what follows a forcible entry. *Vide infra*, s. 40.

As to the FIFTH POINT, *viz.* Who may be guilty of a forcible entry or detainer within these statutes.

*Sect. 32.* It seems clear, that no one can come within the intention thereof by any force whatsoever done by him in entering into a tenement, whereof he himself had the sole and lawful possession, both at and before the time of such entry; as by breaking open the door of his own dwelling-house, or of a castle, which is his own inheritance, but forcibly detained from him by one who claims the bare custody of it; or by forcibly entering into the land in the possession of his own lessee at will. *Sed quare.*

Moor, 786.  
C. Jac. 18.  
2 Keb. 495.

*Sect. 33.* But it seems clear, that a joint-tenant, or tenant in common, may offend against the purport of these statutes, either by forcibly ejecting, or forcibly holding out his companion; for though the entry of such a tenant be lawful *per my et per tout*, so that he cannot in any case be punished in an action of trespass at the common law, yet the lawfulness of his entry no way excuses the violence, or lessens the injury done to his companion, and consequently an indictment of forcible entry into a moiety of a manor, &c. is good.

8 Ed. 4. 9. 19.  
10 H. 7. 27.  
King v. Marrow, 9 Geo. 2.  
B. R. H. 174.

Latch. 224.  
Palmer, 419.

*Sect. 34.* Also if a man have been in possession of land for never so long a time, by a defeasible title, and another, who hath a right of entry thereunto, make a claim, and yet such wrongful possessor still continue his occupation with force and arms, he is punishable for a forcible entry and detainer against the purport of these statutes, because all the estate whereof he was seised before such claim was wholly defeated by it, and his continuance in possession afterwards amounted in the judgment of law to a new entry.

Co. Lit. 256,  
237.  
Crom. 69.  
Lamb. 160, 161.  
Dalt. c. 77.

*Sect. 35.* It is said, that an infant or *feme covert* may be guilty within the intention of the statutes, in respect of such actual violence as shall be done by them in person, but not in respect of what shall be done by others at their command, because all such commands of theirs are void: also it is said, that a *feme covert* may be imprisoned for such offence, but that an infant ought not, because he shall not be subject to corporal punishment by force of the general words of any statute wherein he is not expressly named.

Dalt. c. 77.  
Crom. 69.  
Co. Lit. 357.

1 Hale, 21.  
B. Imp. 43. 45.

As to the SIXTH POINT, *viz.* What ought to be the form of a record grounded upon these statutes: it hath been resolved,

*Sect. 36.* FIRST, That it is sufficient in the caption of such an indictment to say, that it was taken before A. B. and C. D. *justiticiariis ad pacem domini regis conservandum assignatis*, without shewing that they had authority to hear and determine felonies and trespasses; for the statute enables all justices of peace, as such, to take such indictments.

Palmer, 277.  
C. Jac. 653.

*Sect. 37.* SECONDLY, It hath also been resolved, that the tenement in which the force was committed must be described with convenient certainty, for otherwise the defendant will neither

Dalt. c. 81.  
8 Mod. 66.  
12 Mod. 417.  
3 Burr. 1732.

know



(a) Dalt. 15.  
 2 Roll. 16.  
 2 R. Abr. 80.  
 3 Leon. 102.  
 (b) Co. Lit. 6.  
 (c) 2 R. Abr. 40.  
 1 Roll. 334.  
 C. Jac. 633.  
 Palmer, 277.  
 (d) 2 R. Abr. 81.  
 (e) 1 Bulst. 201.  
 (f) 2 Leon. 136.  
 3 Leon. 102.  
 B. Forc. Ent.  
 23.  
 (g) 2 Leon. 186.  
 (h) 2 R. Abr.  
 80.  
 Vide Stra. 174.  
 (i) C. Jac. 633.  
 Palmer, 277.  
 (k) C. Eliz. 453.  
 2 R. Abr. 81.  
 2 Leon. 186.  
 3 Leon. 102.

know the special charge to which he is to make his defence, neither will the justices or sheriff know how to restore the injured party to his possession; and from hence it follows, that an indictment of a forcible entry into a (a) tenement (which may signify any thing whatsoever), (b) wherein a man may have an estate of freehold, or into a house (c) or tenement, or into two closes of meadow (d) or pasture, or into a rood (e) or half a rood of land, or into (f) certain lands belonging to such a house, or into such a house, without shewing in what (g) town it lies, or into a (h) tenement, with the appurtenances, called 'Truepenny in D. is not good.

But it hath been resolved, that an indictment for a forcible entry in (i) *domum mansionalem, sive messuagium*, &c. is good, for these words are equipollent: also that such an indictment for an entry into a (k) close, called Serjeant Hern's close, &c. without adding the number of acres, is good, for here is as much certainty as is required in an ejectment. And it hath been adjudged, that such indictment may be void as to such part thereof only which is uncertain, and good for so much as is certain, and therefore that an indictment for a forcible entry into a house, and certain acres of land thereto belonging, may be quashed as to the land, and stand good as to the house.

St. 21 Jac. 1.  
 2 Keb. 495.  
 3 Bulst. 71.  
 1 Ven. 23. 25.  
 1 Sid. 102. 306.  
 11 Mod. 273.  
 1 Ven. 89.  
 2 Keb. 495.  
 Salk. 260.  
 Sayer, 142. 225.

Hetley. 73.  
 Latch. 109.  
 2 Keb. 177.  
 499.  
 Lat. 1548.  
 1 Keb. 191.  
 C. Eliz. 754.  
 Noy, 131.  
 2 Roll. 65.  
 1 Sid. 102.  
 Con. Yelv. 28.  
 1 Bulst. 177.  
 Show. 272.  
 Con. 1 Ven.  
 306.  
 3 Leon. 102.  
 Aleyu. 49.  
 Palmer, 27.  
 126.  
 Con. 2 R. A. 80.  
 Cro. Jac. 214.  
 633. 939.

**Sect. 38. THIRDLY,** It hath been also resolved, that an indictment on 5 or 15 Rich. 2. needs not shew who had the freehold at the time of the force, because those statutes seem equally to punish all force of this kind, without any way regarding what estate the party had on whom it was made; yet it seems, that such an indictment ought to shew that such an entry was made on the possession of some person who had some estate in the tenements, either as a freeholder or lessee for years, &c. for otherwise it doth not appear that such entry was made injurious to any one. But it is said, that an indictment on 8 Hen. 6. must shew, that the place wherein the force was committed was the freehold of the party grieved at the time of such force; and, therefore, that it is not sufficient to say, that the defendant with strong hand, &c. entered into such a house, *existens liberum tenementum J. S. &c.* without saying, *ad tunc existens liberum tenementum J. S.* for otherwise it may be intended, that it was his freehold at the time of the indictment only, and not at the time of the force; and according to the general opinion, an indictment on that statute cannot warrant an award of restitution, unless it and that the party was seised at the time.

Yet it is said, that the want of such an express finding may be supplied by such words as necessarily imply, that the party was seised at the time of the force: as where it is expressly laid that the defendant disseised J. S. &c. which is impossible, unless he had been seised of the freehold at the same time; and it hath been said, that it is sufficient in such an indictment to say that the party was *possessionatus pro termino vitæ*, without using the word *seisitus*, &c. for the same propriety of expression is not required in indictments as pleadings; *sed quære*.

Also it is said, that if it do appear either in such an express or implicit manner, that the party injured had the freehold of the land at the time of the force, it is not necessary to shew further what estate in particular he had therein, or by what title he claims the same; for it is not the title but the possession which is in question.

And upon the like ground it hath been adjudged, that an indictment on the said statute for entering on my farmer, and forcibly expelling him, and disseising me, is good, without shewing what estate such farmer had; for it is sufficient to shew that he had the possession, and the injury complained of is the forcible disseisin done to me, which, being the main point of the indictment, if it be sufficiently set forth in substance, the indictment is good: yet in this very case, the want of shewing that such farmer was ousted would have been an incurable fault; because his possession being my possession, unless he were ousted, I could not be disseised. 2 R. Abr. 80.  
Yelv. 165.

Also it hath been holden, that as an indictment on 8 Hen. 6. must shew that the party who is put out of possession was seised of a freehold, in order to bring him within the purview of that statute, so also an indictment on 21 Jac. 1. c. 15. must shew, that the party injured was possessed of such an estate as will bring him within the provision of that act; and upon this ground it hath been resolved, that such an indictment, setting forth in general, that the party was possessed, or that he was possessed for a certain term, without adding that it was for years, is not good: for in the first case it may be intended, that he was possessed only by virtue of a lease at will; and in the second, that he was possessed of a term for life; in neither of which cases he is within the benefit of 21 Jac. 1. c. 15. Yet it hath been said, that the possession of such an estate as is within that statute, is sufficiently set forth in the reciting part of an indictment, as thus, *quod cum* J. S. was possessed for a certain term of years, and, being so possessed, was, by strong hand, &c. put out of possession, &c. without any direct allegation of such a possession. Farresl. 123.  
1 Ven. 306.  
1 Sid. 102.  
1 Mod. 73.  
2 Keb. 709.  
Salk. 260.  
Farresl. 123.  
1 Mod. 73.

*Sect. 39. FOURTHLY,* It hath been resolved, that a repugnancy in setting forth the offence in an indictment upon any of these statutes, is an incurable fault; and upon this foundation it hath been adjudged, that an indictment on 8 Hen. 6. setting forth, that the defendants *pacifice intraverunt, &c. et eum adtunc et ibidem vi et armis disseisiverunt*, or that J. S. was seised and possessed, is void. And it hath also been adjudged, that an indictment on 21 Jac. 1. setting forth, that the party injured was possessed of a term for years, or of a copyhold estate, and that the defendants with strong hand ousted and disseised him, is void; because it is absurd and contradictory to set forth a disseisin of such an estate whereof it is impossible that any man can be disseised. Also it hath been holden, that an indictment on 8 Hen. 6. setting forth a disseisin of land, *adtunc et adhuc existens liberum tenementum* J. S. is void for its repugnancy, inasmuch as it implies, that J. S. always continued in possession, which, if it be true, makes it impossible that he could be disseised at all; but some Aleyn, 50.  
Show. 272.  
1 Vent. 108.  
Popham, 205.  
Raymond, 67.  
1 Keb. 423.  
428. 435. 472.  
2 Roll. 311.  
Show. 272.  
2 Bulst. 121.  
1 Sid. 102.

some have said that this seeming repugnancy may be reconciled, by intending that the disseisee might re-enter after the time of the disseisin, and before the finding of the indictment. However, it seems clear that, if the words *adhuc extratenet* be added, such a repugnancy cannot be helped by any intendment; and that no restitution can be awarded on such an indictment, whether those words *adhuc extratenet* be in it or not, because the party grieved appears by the indictment itself to have had the freehold at the time of the finding thereof.

2 R. Abr. 80.

*Sect. 40. FIFTHLY*, It hath been resolved, that an indictment of a forcible detainer, without shewing that the defendant made an entry into the same lands, is not good; because the statute doth not prohibit one, who hath always been in possession, to maintain the same with force. And it seems clear, that a conviction of a forcible detainer upon view, by force of 15 Rich. 2. cannot be good, unless it shew that the defendant was also guilty of a forcible entry; for the words of that statute are, "that at all times that such forcible entries are made, and complaint thereof cometh to the justices, &c. that the same justices, &c. shall go, &c. and if they find any that hold such place forcibly, after such entry made, &c." by which it is plain, that the justices have no jurisdiction by force of this statute, but where the entry, as well as detainer, was forcible. Yet in *Leighton's Case* it was resolved, that such a forcible entry is sufficiently set forth in the complaint recited in such conviction; and it is plain, that the statute could not intend that the forcible entry should be viewed, because it is to precede the proceedings of the justices: but perhaps it is the better opinion, that an indictment upon 8 Hen. 6. setting forth an entry and forcible detainer, without shewing whether the entry were forcible or peaceable, is good; for there is no medium between a forcible and peaceable entry; and an entry not alleged to have been forcible, shall be intended to have been peaceable; or if not so, yet it seems to be no way material, whether it shall be taken to have been forcible or peaceable, because in either case it is equally within the statute, the words whereof as to this purpose are, "Where any doth make forcible entry in lands and tenements, or other possessions, or them hold forcibly;" by which it appears, that a forcible detainer is a distinct offence from that of a forcible entry, and no way depending on it; and my Lord Chief Justice Holt seemed to be of this opinion in *Leighton's Case* above-mentioned. However, it seems to be certain, that, if a bill both for a forcible entry and forcible detainer, be preferred to a grand jury, and found *ignoramus* as to the entry with force, and *billu vera* as to the detainer, it will not warrant an award of restitution, but is void, because the grand jury cannot find a bill true for part, (a) and false for part, as a petit jury may.

Palm. 195, 196,  
197.  
C. Jac. 19, 20.  
Yelv. 32.  
C. Eliz. 915.

B. R. Hill.  
1703.

2 R. Abr. 80.

Yelv. 99.  
C. Jac. 151.  
1 Sid. 97, 99.  
414.  
2 Keb. 505.  
*Vide infra*, c. 50.  
B. 2. c. 25.

(a) *Vide Rex v.*  
*Fieldhouse*,  
*Cowper*, 325.

Salk. 260.  
B. Force, 13.  
Lamb. 153.  
Dalt. c. 81.  
Summary, 119.  
Hard. Ca. 171.  
Savil, 68.  
Strange, 474.

*Sect. 41. SIXTHLY*, It hath been resolved, that no indictment can warrant an award of restitution, unless it find that the wrongdoer both ousted the party grieved, and also continueth his possession at the time of the finding of the indictment; for it is a repugnancy to award restitution of possession to one who never

was

was in possession, and it is vain to award it to one who doth not appear to have lost it.

*Sect. 42. SEVENTHLY,* It hath been resolved, that the time and place of the disseisin are sufficiently set forth in an indictment, alleging that the defendant *tali die intravit, &c. et ipsum A. B. manu forti disseisivit*, without adding the words *ad tunc et ibidem*; for inasmuch as the entry and disseisin are both of them of the same nature, and the one of them naturally tends to cause the other, it is implied, that they both happened at the same time; and the forcible entry being the principal offence within the purview of these statutes, and the disseisin being only added to shew that the party grieved hath a right to a restitution, as to which the day of the disseisin is no way material, it seemeth to be over-nice to require a precise exactness in setting it forth; neither can it be to any purpose to allege that the disseisin was at the same place with the entry, since it appears from the nature of the thing that it could not but be so. Yet in an indictment of murder it is perhaps a fatal mistake, not expressly to shew the day and place of the stroke, as well as of the assault, because these offences are of different kinds, the one being only a trespass, and the other a felony, and may well be intended to have happened at different times and places: and the giving of the stroke, being the principal offence, ought to be set forth with the most exact certainty.

*Sect. 43. EIGHTHLY,* It hath been resolved, that a disseisin is sufficiently set forth, by alleging that the defendant entered, &c. into such a tenement and disseised the party, without adding either the words (a) *illicite*, or (b) *expulit*, (c) *inde*, for the word *disseisivit* implies as much.

*Sect. 44. NINTHLY,* It hath been resolved, that an indictment which pursues the words of the statute, in alleging an entry, &c. to have been made *manu forti*, need not expressly also to say, that it was made *vi et armis*, because that is implied. Also it is said, that as the want of those words will not vitiate an indictment which pursues the statute, so neither will the using of them make good an indictment which does not pursue it; yet it hath been resolved, that such an indictment may be good without mentioning any complaint, though the statute seems to require it; for it is said, that those words in the statute are put in *causâ abundanti*; and that if a justice of peace have by any means whatsoever notice of a forcible entry or detainer, he may and ought to proceed against the same according to the said statute, as being a disturbance of the public peace, the preservation whereof was the chief end of these statutes.

As to the SEVENTH POINT, *viz.* Of what kind of possessions a restitution is to be awarded.

*Sect. 45.* It seems, that it ought only to be awarded for the possession of such tenements as are visible and corporeal; for no one who hath a right to such as are invisible and incorporeal, as rents, commons, &c. can be put out of possession thereof, but only at his own election, by a fiction of law, in order to enable him

C. Jac. 41. 151.

B. 2. c. 23. s. 88.

Dyer, 68.

Sayer, 225.

(a) Noy, 125.

(b) C. Jac. 32.

(c) C. Eliz. 86.

Con. Noy, 120.

11 Mod. 235.

C. Eliz. 461.

Litch, 224.

2 Buls. 258.

B. 2. c. 25. s. 92.

Con. 1 Keb.

572.

2 Keb. 133.

135.

1 Vent. 265.

3 Burr. 1732.

3 Burr. 1699.

7 Ed. 4. 18.

Dalt. 25.

Dalt. c. 81.

Lamb. 153.

Co. Lit. 323.

See Cruise on  
Fines, 248.

him to recover damages against the person who hath wrongfully disturbed him in the enjoyment of them; for such things being mere creatures of the law, and depending entirely upon the construction thereof, are always in the possession of those whom the law adjudges to have a right to such possession; and consequently all the remedy that can be desired against a force offered to a man in respect of such like possessions, is to have the actual force removed, and the offenders punished for the same, which may be done by the force of 15 Rich. 2. &c.

As to the EIGHTH POINT, viz. To whom such restitution ought to be made.

Dalt. c. 83.  
Lamb. 153.

*Sect. 46.* It hath been holden, that it shall only be given to him who is found by the indictment to have been put out of an actual possession, and consequently that it shall not be awarded to one who was only seised in law, as to an heir upon whom a stranger abateth upon the death of the ancestor, before any actual entry by such heir; and from the same ground it followeth, that it shall not be granted to an heir upon an indictment, finding a forcible entry made upon his ancestor.

Lamb. 154.  
Dalt. c. 83.  
Vide C. Jac.  
199.

Crom. 162, 163.

*Sect. 47.* It hath been holden by some, that if a disseisee re-enter peaceably upon the disseisor, and continue for some time peaceably upon the tenements in dispute, and afterward detain them with force, the disseisor shall not be restored upon an indictment finding the said force, because his possession was at first peaceably defeated, and at the time of the force, he had, in the judgment of law, no possession at all. But I cannot be persuaded that this opinion is agreeable to the intention of the said statutes, the principal end whereof seems to be to oblige all persons to refer themselves to the courts of justice for the decision of their claims to the possession of land, and to restrain them from disturbing the public peace by such endeavours to right themselves; but if such a practice as this should be allowed, it would be easy to evade the effect thereof by refraining from violence at first, and then forcing the party to leave the possession of the premises after a short continuance thereon in peace; neither do I see any difference between such a continuance for the space of three days, and a continuance for three hours or minutes, inasmuch as the subsequent force is in each case equally within the mischief intended to be provided against by the statutes; and seeing the statutes of 8 Hen. 6. and 31 Eliz. c. 11. have expressly provided, that those who have been in possession for three years shall not be put out of possession by an indictment of forcible entry or detainer, it seems plainly to be implied, that no one shall have the like advantage in respect of a shorter time.

*Sect. 48.* It will be needless in this place to shew of what kind of hereditaments, or of what kind of estate therein, the party who is to be restored must be found to have been seised or possessed, because this may sufficiently appear by what hath been said in the foregoing part of this title.

As to the NINTH POINT, viz. By whom and in what manner such restitution may be awarded and given.

*Sect.*

*Sect. 49.* There is no doubt but that the same justice, before whom an indictment of forcible entry or detainer shall be found, may grant an award of restitution to the party; and it is said, that he may execute the same either in his own proper person, or make his precept to the sheriff to do it.

Comyns, 61.  
Dalt. c. 82.  
Dyer, 187.  
12 Mod. 495.

*Sect. 50.* But it seems clear, that neither justices of peace, nor any court whatsoever, have authority to grant a restitution upon a conviction of any force taken by them upon view, unless the same be found by an indictment, according to the direction of 8 Hen. 6. c. 9. or 27 Jac. 1. c. 15. (a) Also it seems to be agreed, that no other justices of peace, except those before whom such an indictment shall be found, have any power, either at sessions or out of it, to make any award of restitution; and that no other court whatsoever can personally restore the party without a precept to the sheriff.

1 Sid. 156.  
1 Keb. 88.  
1 Ven. 308.  
Dyer, 187.  
Dalt. c. 82.  
Lamb. 184.  
(a) Vide 3.  
Com. Dig. 366.  
where it is said  
that a justice of  
peace or sheriff  
may break open  
a house to make  
restitution.

*Sect. 51.* Also it hath been resolved, that justices of *oyer* and *terminer* have no power, either to inquire of a forcible entry or detainer, or to award restitution on any such indictment; because when a new power is created by statute, and certain justices are assigned to execute it, it cannot regularly be executed by any other: and inasmuch as justices of *oyer* and *terminer* have a commission entirely distinct from that of justices of peace, they shall not, from the general words of their commission, *ad inquirend' de omnibus transgr' et de omnibus aliis articulis et causis cont' formam quoruncunque statutorum fact' sive perpetrat'*, be construed to have any such powers as are specially limited to justices of peace.

Keilw. 159.  
Dalis. 25.  
9 Co. 118.  
11 Co. 65.

Yet it hath been resolved, that the justices of the king's bench may award restitution upon an indictment of forcible entry or detainer removed before them, because the said justices, having a supreme and sovereign jurisdiction over all matters of a criminal and public nature, have always been esteemed to have power in all causes of this nature, being brought judicially before them, to give the parties such remedies in relation thereto, as they shall appear to have a right to demand, either by common law or by statute.

Farresl. 138.  
7 Ed. 4. 18.  
4 II. 7. 18.  
Dalt. c. 82.

See *Rex v.*  
*Jones, Stra.*  
474.

*Sect. 52.* The sheriff, if need be, may raise the power of the county to assist him in the execution of a precept of restitution, and therefore, if he make a return thereto, that he could not make a restitution by reason of resistance, he shall be amerced.

Lamb. 157.  
Dalt. c. 82.

As to the Tenth Point, *viz.* How such restitution should be barred by the continuance of a possession for three years.

*Sect. 53.* It appears from the abovementioned proviso of 8 Hen. 6. and also by 31 Eliz. c. 11. that any one indicted upon these statutes may allege such possession to stay the award of restitution: in the construction whereof it hath been holden, that such possession must have continued without interruption during three whole years next before the indictment; and therefore that he who having been in possession of land for three years or more, is forcibly ousted, and then restored by force of the statute of 8 Hen. 6. cannot justify a forcible detainer, till he have been in possession

Salkeld, 260.  
Carthew, 496.  
12 Mod. 268.  
Farresl. 138.  
Dalt. c. 79.  
Crompton, 71.  
Summary, 139.  
Dyer, 141.  
22 H. 6. 18.  
B. Force, 22. 29.  
1 Inst. 256.  
Raymond, 85.  
1 Sid. 149.

possession again for three years after such restitution: and also for the same reason it hath been said, that he, who, under a defeasible title, hath been never so long in possession of land to which another hath a right of entry, cannot justify such a detainer at any time within three years after a claim made by him who hath such a right, because all defeasible estates in the land are wholly defeated by such a claim, and the subsequent continuance in possession amounted to a new entry.

Dalt. c. 79.  
22 H. 6 18.  
Crompton, 71.  
Holding over  
by force,  
where the  
tenant's title  
was under a  
lease then ex-  
pired, is said to  
be a forcible  
detainer.  
Cio. Jac. 199.

*Sect. 54.* There have been some opinions that the three years possession must be of a lawful estate, and consequently that a disseisor's continuance in quiet possession for never so many years shall not justify a forcible detainer; but it seems necessary to make a distinction between a detainer against him who has a right of entry, and a detainer against a stranger, or one who by his laches has lost his right of entry; for I do not see why three years continuance of a defeasible possession should not justify a detainer by force against a stranger, inasmuch as he cannot take advantage of another's right, and bare possession is a good title against all persons, except him who hath the right, and cannot be lawfully defeated by any other. Also, if one who has the mere right to lands, have so long neglected to recover the possession thereof, till in judgment of law he hath no more right to such possession, till he has recovered it by action, than a mere stranger, there doth not seem to be any reason that he should have more advantage against a forcible detainer, than if he were a mere stranger.

4 Comm. 149.

*Sect. 55.* Also it hath been holden, that a peaceable continuance in possession for three years after a forcible entry, under any title whatsoever, will not justify a forcible detainer, inasmuch as the possession was at first gained by force. But I cannot think this a reasonable construction of the said statutes, for the force in the detainer, being after three years quiet possession, seems justifiable by the express words of the statute; and where the force used in gaining a possession is afterwards wholly laid aside, there seems to be no colour to say, that it makes the subsequent possession less quiet or peaceable than it would have been, if there had been no force at all used at the first.

1 Keb. 538.  
R. v. Burges,  
Salkeld, 261.

*Sect. 56.* It seems clear from the express purview of the said statute of 31 Eliz. c. 11. that wherever the defendant pleadeth such a possession in bar of restitution upon such an indictment, either before the justices of peace, or in the king's bench, no restitution ought to be awarded till the truth of the plea be tried; and it hath been holden, that the plea of such a possession is good, without shewing under what title, or of what estate such possession was; because it is not the title, but the possession only, which is material in this case.

1 Sid. 149.  
Raym. 84.  
1 Ver. 255.

4 Comm. 149.

*Sect. 57.* It seems that, from the wording of 31 Eliz. c. 11. if one who has been in possession for three years, be ousted, and the same day re-enter with force, and also be indicted for such re-entry on the very same day, it may be questioned whether the prosecutor ought to have restitution, inasmuch as the words of the

the statute are, "that there shall be no restitution, &c. if the "person indicted have been in quiet possession for three years "next before the day of the indictment found;" and here the defendant hath been in possession three years before the day of the indictment, though not three years before the indictment, inasmuch as he was ousted the same day. But if it be considered, the circumstance of finding the indictment on that day no way affects the merits of the case, or lessens the offence any more than if it were found on any other day, and that restitution must have been awarded if it had been found on another day, and that the mischief complained of in the preamble is, that persons were, by colour of such indictments, often turned out of their possessions which they had quietly enjoyed for three years next before such indictments found, which does not extend to the defendant in the present case, I rather incline to think, that restitution might be awarded to the prosecutor in this case; inasmuch as it clearly appears, that the defendant's possession hath not had three years uninterrupted continuance within the intent of the statute.

1 Burr. 119.

As to the ELEVENTH POINT, *viz.* For what other causes such restitution may be stayed.

*Sect. 58.* It seemeth to be settled at this day, that if the defendant tender a traverse of the force, which must be done in writing, and not by a bare denial of the force by parol, the justice ought not to make any restitution till the traverse be tried; in order whereunto he must award a *venire facias*, whereon a jury must be returned, on whose verdict the award of restitution ought to depend.

1 Keb. 343.  
2 Keb. 49.  
571.  
1 Sid. 284.  
Salk. 567. 586.  
Cases temp.  
Hardwicke,  
p. 175.

*Sect. 59.* It hath been resolved, that if such a jury find part of the indictment to be true, and part of it to be false, yet if they find so much thereof to be true as will warrant a restitution, the justice ought to restore the party: as where, on an indictment of forcible entry and forcible detainer, the jury find that the entry was peaceful, and the detainer was only forcible.

1 Sid. 97. 99.  
1 Keb. 127.

*Sect. 60.* As the justice is bound to stay the award of restitution, upon the defendant's tendering a traverse of the force, so it hath also been said, that he ought not to make such an award in any case in the defendant's absence, without calling him to answer for himself; for it is implied by natural justice, in the construction of all laws, that no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself.

Savil. 68.  
Alecyn. 76.

As to the TWELFTH POINT, *viz.* How such a restitution may be superseded before it is executed.

*Sect. 61.* There is no doubt but that the same justices, by whom a restitution is awarded upon an indictment of forcible entry or detainer found before them, may also afterwards, upon an insufficiency of the indictment appearing unto them, supersede the same before it is executed. And it hath also been said, that if such an indictment be taken, and restitution awarded by four or five justices, that two or even one of the same justices may supersede the execution thereof, as well as more or all of them.

Dyer, 187.  
Summary, 140.  
Crom. 165.  
Dalt. c. 81. 84.  
Cro. Eliz. 915.  
Yelv. 32.



them. But it seems to be agreed, that no other justices, or other court whatsoever, hath such power, except the King's Bench.

C. Eliz. 915.  
Yelv. 32.  
Moor, 677.  
1 Keb. 93.  
Summary, 141.  
Strange, 474.

*Sect. 62.* However, it is certain, that a *certiorari* from the King's Bench is a *supersedeas* to such restitution; for every such *certiorari* has these words, *coram nobis terminari volumus et non alibi*; and consequently it wholly closes the hands of the justices of peace, and avoids any restitution which is executed after the *teste*, but does not bring the justices of the peace, &c. into a contempt, unless they proceed after the delivering thereof.

Sayer, 176.

As to the THIRTEENTH POINT, *viz.* How such restitution may be set aside after it is executed.

Savil, 68.  
Sum. 140, 141.  
C. Eliz. 31.  
Sup. s. 56.

*Sect. 63.* It is certain, that the justices of the King's Bench, having in general a superintendent power over all the proceedings whatsoever of justices of peace, may set aside any such restitution, if it shall appear to them to have been either awarded or executed against law; as where the indictment whereon it was grounded, being removed before them, appears to be insufficient, and thereupon is quashed; or the defendant traverses the force and gets a verdict in the King's Bench; or wherever it sufficiently appears that the justices of peace have been irregular in their proceedings, as by refusing to try a traverse of force tendered by the defendant, &c.

Noy, 119.  
Yelv. 99.  
C. Jac. 148,  
149.

B. 2. c. 37.  
s. 61.

*Sect. 64.* Yet if an indictment on these statutes be removed into the King's Bench, and the defendant, having been turned out of possession by the grant of restitution to the prosecutor by the justices of peace, traverse the force in the King's Bench, and then the offence be pardoned by a general pardon, the Court cannot proceed on the trial, notwithstanding the defendant would waive the benefit of the pardon; because it appears judicially, that the king can have no benefit of a fine from the defendant if the verdict pass against him, and the Court will never falsify an indictment, which is found by the oaths of twelve men, by bare affidavits; and consequently in this case the defendant can have no remedy to set aside the restitution by controverting the truth of the indictment.

Raymond, 85.  
1 Keb. 343.  
808.  
2 Keb. 505.  
Summary, 141.  
C. Eliz. 916.  
Salk. 587.  
Dyer, 123.  
2 Keb. 571.  
Savil, 68

*Sect. 65.* Neither can a defendant in any case whatsoever, *ex rigore juris*, demand a restitution, either upon the quashing of the indictment, or a verdict for him on a traverse thereof, &c.; for the power of granting a restitution is vested in the King's Bench only by an equitable construction of the general words of the statutes, and is not expressly given by those statutes; and is never made use of by that Court but when, upon consideration of the whole circumstances of the case, the defendant shall appear to have some right to the tenements, the possession whereof he lost by the restitution granted to the prosecutor.

C. Eliz.

For the form of the indictment, vide 2 Burn's Justice, 220.

*Sect. 66.* The Court of King's Bench hath been so favourable to one, who, upon his traverse of an indictment upon these statutes being found for him, hath appeared to have been unjustly put out of his possession, that they have awarded him a re-restitution, notwithstanding it hath been shewn to the Court, that since

since the restitution granted upon the indictment, a stranger hath recovered the possession of the same land in the lord's court.

#### 4. *Of Riots, Routs, and Unlawful Assemblies.*

In treating of Riots, Routs, and Unlawful Assemblies, I shall consider,

FIRST, What shall be called a riot, rout, or unlawful assembly. 12 Mod. 510.

SECONDLY, How they may be suppressed and punished by the common law.

THIRDLY, How by statute.

*Sect. 1.* A Riot seems to be a tumultuous disturbance of the peace, by three persons, (a) or more, assembling together of their own authority, with an intent mutually to assist one another, against any who shall oppose them, in the execution of some enterprize of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful. (b)

594. Popham, 202. 1 Id. Ray. 484. 12 Mod. 262, 509. Strange, 196. 11 Mod. 113, 116, 117  
1 Black. 350.

(a) Vide 1 Ven. 251.  
Salk. 594, 595.  
Dalt. c. 85, 86,  
87.  
Crom. 61, &c.  
Pulton, 25, &c.  
3 Inst. 176.  
Summary, 137.  
3 Mod. 141.  
(b) See Salk.

For the better understanding whereof, I shall consider the following particulars :

1. How far such an assembly may become riotous through the want of legal authority expressed or implied, or be excusable by reason of such authority.

2. How far the intention with which the parties assemble together must be unlawful.

3. With what kind of violence or terror the intended enterprize must be executed.

4. How far the grievance intended to be redressed must be of a private nature.

5. Whether the unlawful execution of an act in its own nature lawful may not make an assembly riotous.

As to the FIRST POINT, *viz.* How far such an assembly may become riotous through the want of legal authority expressed or implied, or be excusable by reason of such authority.

*Sect. 2.* It seems, That wherever more than three persons (c) use force and violence in the execution of any design whatever wherein the law does not allow the use of such force, all who are concerned therein are rioters. (d) But in some cases wherein the law authorizes force, it is not only lawful, but also commendable to make use of it ; as for a (e) sheriff or (f) constable, or perhaps even for a private (g) person, to assemble a competent number of people in order with force to suppress rebels, or enemies, or rioters, and afterwards with such force actually to suppress them ; or for a justice of peace, who has a just cause to fear a violent resistance,

equally attentive. 4 Burn. 88. (d) Burr. 1262. K. v. Scott and Harris, 1 Black. 350. Popham, 121. (f) 3 H. 7, 10. (g) Pop. 121. Moor, 656. (c) The words " more than three persons," are three times over (s. 2. 5. 7.) inserted instead of " three persons or more ;" an instance, that in a variety of matter it is impossible for the mind of man to be always

(c) 2 And. 69.

- resistance, to raise the posse, in order to remove a force in making an entry into, or detaining of, lands. Also it seems to be the duty of a
- (a) 2 Inst. 193. (a) sheriff, or other minister of justice, having the execution of the king's writs, and being resisted in endeavouring to execute the same, to raise such a power as may effectually enable them to overpower any such resistance; yet it is said not (b) to be lawful for them to raise a force for the execution of a civil process, unless they find a resistance; and it is certain, that they are highly punishable for using any needless outrage or violence therein.
- (b) 3 Inst. 161.  
2 Inst. 193.  
Hob. 62, 264.

As to the SECOND POINT, *viz.* How far the intention with which such persons assemble together must be unlawful.

Lamb. 179, &c.  
Dalt. c. 86.  
Crom. 61, 62.  
6 Mod. 43.  
Skinner, 118.  
Salkeld, 595.

Sect. 3. It seems agreed, that if a number of persons being met together at a fair, or market,\* or church-ale, or any other lawful or innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which none are guilty but those who actually engage in it, because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly without any previous intention concerning it. Yet it is said that if persons innocently assembled together, do afterwards, upon a dispute happening to arise among them, form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot, because, upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first coming together had been on such a design: however, it seems clear, that if in an assembly of persons met together on any lawful occasion whatsoever, a sudden proposal should be started of going together in a body to pull down a house, or inclosure, or to do any other act of violence, to the disturbance of the public peace, and such motion be agreed to, and executed accordingly, the persons concerned cannot but be rioters, because their associating themselves together for such a new purpose is no way extenuated by their having met at first upon another. Also it seems to be certain, that if a person, seeing others actually engaged in a riot, do join himself unto them, and assist them therein, he is as much a rioter as if he had at first assembled with them for the same purpose: inasmuch as he has no pretence that he came innocently into the company, but appears to have joined himself unto them, with an intention to second them in the execution of their unlawful enterprize; and it would be endless, as well as superfluous, to examine whether every particular person engaged in a riot were in truth one of the first assembly, or actually had a previous knowledge of the design thereof.

Vide Rex v.  
John Royce,  
Burrow, 2073.

6 Modern, 43.  
See the case of  
Midwinter and  
Syms, Fox  
v. the Law,  
3d edit. 415, and the Coalheavers' Case, Cases in Crown Law, 61.

As to the THIRD POINT, *viz.* With what kind of violence or terror the intended enterprize must be executed.

Dalt. c. 85.  
Lamb. 175.  
3 Inst. 176

Sect. 4. It hath been holden, that it ought to be accompanied with some offer of violence, either to the person of a man or to his possessions, as by beating him or forcing him to quit the possession of his lands or goods, &c. And from hence it seems

seems to follow, that persons riding together on the road with unusual weapons, or otherwise assembling together in such a manner as is apt to raise a terror in the people, without any offer of violence to any one in respect either of his person or possessions, are not properly guilty of a riot, but only of an unlawful assembly.

*Sect. 5.* However, it seems to be clearly agreed, that in every riot there must be some such circumstances either of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the people; as the shew (a) of armour, threatening speeches, or turbulent gestures; for every such offence must be laid to be done *in terrorem populi*. (b) And from hence it clearly follows, that assemblies at wakes, or other festival times, or meetings for exercise of common sports or diversions, as bull-baiting, wrestling, and such like, are not riotous. And from the same ground also it seems to follow, that it is possible for more than three persons (c) to assemble together, with an intention to execute a wrongful act, and also actually to perform their intended enterprize, without being rioters; as if a competent number of people assemble together, in order to carry off a piece of timber to which one of the company hath a pretended right, and afterwards do carry it away without any threatening words, or other circumstances of terror. And from the same ground it seems also to follow, that persons assembled together in a peaceful manner to do a thing prohibited by statute, as to celebrate mass, &c. and afterwards peacefully performing the thing intended, cannot be said to be rioters; for there seems to be no reason why an assembly should become riotous barely for doing a thing contrary to the statute, any more than for doing a thing contrary to common law.

(a) Lamb. 178.  
Dalt. c. 871.  
3 H. 7. 1.  
6 Mod. 141.  
2 Keb. 558  
Con. 1 Roll.  
109.  
3 Burr. 1263.  
11 Mod. 116.  
Lamb. 179.  
(b) Vide the  
opinion of Holt,  
C. J. in the case  
of the Queen v.  
Soley, 11 Mod.  
115.  
(c) It should  
be "three per-  
sons or more:"  
vide note (c)  
to section 2.  
Pulton, 25.  
3 Keb. 578.  
Hobart, 91.  
Lambard, 178.  
Crompton, 62.  
Quere,  
6 Mod. 141.  
2 Keb. 558.  
Con. 1 Mod. 13.  
1 Ven. 369.380.  
11 Mod. 116.

As to the *FOURTH POINT*, viz. How far the grievance intended to be redressed must be of a private nature.

*Sect. 6.* It seems agreed, that the injury or grievance complained of and intended to be revenged or remedied by such an assembly, must relate to some private quarrel only; as the inclosing of lands in which the inhabitants of a town claim a right of common, or gaining the possession of tenements, the title whereof is in dispute, or such like matters relating to the interests or disputes of particular persons, no way concerning the public; for wherever the intention of such an assembly is to redress public grievances, as to pull down all inclosures in general, or to reform religion, or to remove evil counsellors from the king, &c. if they attempt with force to execute such their intentions, they are, in the eye of the law, guilty of levying war against the king, and consequently of high treason, as appears from Chapter 2, section 25.

As to the *FIFTH POINT*, viz. Whether the execution of an act in its own nature lawful, may make an assembly riotous.

*Sect. 7.* It hath been generally holden, that it is no way material whether the act intended to be done by such an assembly be of itself lawful or unlawful; from whence it follows, that if more than three

Quere; and  
vide Salk. 594,  
595.  
Crom. 64. 66.  
Dalton, c. 87.

(a) It should be "three persons or more;" vide sect. 2.

5 Modern, 3.  
11 Mod. 117.  
2 Show. 236.  
12 Mod. 648.

Lamb. 175, 176.  
Crom. 61.  
Dalt. c. 85.  
B. Riots, 4, 5.  
Pulton, 25.

three persons (a) assist a man to make a forcible entry into lands to which one of them has a good right of entry, or if the like number in a violent and tumultuous manner join together in removing a nuisance, which may lawfully be done in a peaceful manner, they are as properly rioters, as if the act intended to be done by them were never so unlawful; for the law will not suffer persons to seek redress of their private grievances by such dangerous disturbances of the public peace. However, the justice of the quarrel in which such an assembly doth engage, is certainly a great mitigation of the offence.

*Sect. 8. A Rout* seems to be, according to the general opinion, a disturbance of the peace by persons assembling together with an intention to do a thing, which if it be executed, will make them rioters, and actually making a motion towards the execution thereof. But by some books the notion of a rout is confined to such assemblies only as are occasioned by some grievance common to all the company; as the inclosure of land in which they all claim a right of common, &c. However, inasmuch as it generally agrees with a riot as to all the rest of the abovementioned particulars requisite to constitute a riot, which have been already fully explained, except only in this, that it may be a complete offence without the execution of the intended enterprize, it seems not to require any further explication.

Crompton, 61.  
B. Riots, 1.  
Pulton, 25.  
Dalt. c. 95.

Hobart, 97.  
Selk. 591, 592.  
1 Ven. 369.  
380.

21 H. 7. 59.  
Lamb. 179, 180.  
Summary, 137.  
Crom. 64.  
B. Riots, 1.  
5 Co. 91.  
11 Mod. 112.

*Sect. 9. An Unlawful Assembly*, according to the common opinion, is a disturbance of the peace by persons barely assembling together with an intention to do a thing which, if it were executed, would make them rioters, but neither actually executing it, nor making a motion toward the execution of it. But this seems to be much too narrow a definition. For any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the king's subjects, seems properly to be called an unlawful assembly; as where great numbers, complaining of a common grievance, meet together, armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for no one can foresee what may be the event of such an assembly.

*Sect. 10.* Also an assembly of a man's friends for the defence of his person against those who threaten to beat him, if he go to such a market, &c. is unlawful; for he who is in fear of such insults must provide for his safety by demanding the surety of the peace against the persons by whom he is threatened, and not make use of such violent methods, which cannot but be attended with the danger of raising tumults and disorders, to the disturbance of the public peace. Yet an assembly of a man's friends in his own house, for the defence of the possession thereof, against those who threaten to make an unlawful entry therein, or for the defence of his person against those who threaten to beat him therein, is indulged by law; for a man's house is looked upon as his castle. (b)

(b) 3 Inst. 167.

SECONDLY, *viz.* How far offences of this nature may be suppressed and punished by the common law.

*Sect.*

*Sect. 11.* It seems clear, that every sheriff, under-sheriff, and also every other peace-officer, as constables, &c. may and ought to do all that in them lies towards the suppressing of a riot, and may command all other persons whatsoever to assist them therein. Also it is certain that any private person may lawfully endeavour to appease all such disturbances by staying those whom he shall see engaged therein from executing their purpose, and also by stopping others whom he shall see coming to join them; for if private persons may do thus much, as it is most certain that they may, towards the suppressing of a common affray, surely *à fortiori* they may do it towards the suppressing of a riot. Also it hath been holden, that private persons may arm themselves in order to suppress a riot; from whence it seems clearly to follow, that they may also make use of arms in the suppressing of it, if there be a necessity for their so doing. However, it seems to be extremely hazardous for private persons to proceed to those extremities; and it seems no way safe for them to go so far in common cases, lest, under the pretence of keeping the peace, they cause a more enormous breach of it; and therefore such violent methods seem only proper against such riots as savour of rebellion, for the suppressing whereof no remedies can be too sharp or severe.

Popham, 121.  
5 Il. 7. 1. 10.

Popham, 121.  
Kelynge, 76.

However, it is enacted by 1 Geo. 1. c. 5. "That if more persons than twelve being unlawfully, riotously, and tumultuously assembled, twelve or more of them shall continue together, and not disperse themselves within one hour after proclamation made in pursuance of that statute, that then every peace-officer of the place where such assembly shall be, and all persons who shall be commanded to be assisting to such officer, may and ought to apprehend all such rioters, and carry them before some justice of peace; and that if any such rioter shall happen to be killed, maimed, or hurt by reason of their resisting such officer, &c. the officer shall be discharged, &c." But the statute, being wholly in the affirmative, cannot be thought to take away any part of the authority in the suppressing of a riot, which was before that time given either to officers or private persons by the common law or by statute.

A person p  
sent at and  
abettin ders  
is a prin pal in  
the de  
gu , and r this  
act of parlia-  
ment.  
4 Burr. 2073.

Vide Douglas,  
p. 700. n. (1)  
(2).

*Sect. 12.* Generally, offences of this nature are punished at the common law as trespasses, by fine and imprisonment only; yet sometimes, where they have been very enormous, they have been punished with the pillory; and anciently, if they were undertaken in contempt of the king's express prohibition of their meeting, under pain of forfeiture of lands, &c. they seem to have been punishable with such forfeiture.

Crompton, 61.  
Dalt. c. 46.  
C. Car. 507.

2 R. Abr. 208.

*Sect. 13.* It hath been holden, that the persons of whom a corporation consists, being guilty of a riot, are punishable in their natural, but not in their politic capacity; for the corporation itself cannot be in fault, because it is invisible, and exists only in supposition of law. Yet there are some precedents by which it appears that corporations have been amerced, and their liberties seized into the king's hands, for suffering a dangerous riot to happen

21 Ed. 4. 13, 14.  
Dalt. c. 68.  
C. Car. 252.  
2 Hale, 155.

happen within their jurisdiction without using their endeavours to suppress it.

*Sect. 14.* Women are punishable as rioters, but infants under the age of discretion are not.

THIRDLY, *viz.* How far offences of this nature may be suppressed and punished by statute. I shall consider,

1. How far they may be suppressed and punished by one justice of peace.

2. And how far by two or more.

As to the FIRST of these POINTS, *viz.* How far they may be suppressed and punished by one justice of peace.

*Sect. 15.* It is enacted by 34 Edw. 3. c. 1. "That justices of peace shall have power to restrain offenders, rioters, and all barrators, and to pursue, arrest, take and chastise them according to their trespass and offence; and to cause them to be imprisoned and duly punished, &c."

14 H. 7. 9.

Lamb. 181, &c.

Dalt. c. 46.

B. Peace, 7.

Pulton, 28.

Crom. 62, 63,

64, 65. 195.

Keilway, 41.

*Sect. 16.* And this statute has been liberally construed for the advancement of justice; for it hath been resolved, that if a justice of peace find persons riotously assembled, he alone, without staying for his companions, hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do not offer good bail, but that he may also authorize others to arrest them by a bare parol command without other warrant, and that by force thereof the persons so commanded may pursue and arrest the offenders in his absence as well as presence. It is also said, that if a justice of peace be sick, and hear that persons are riotously assembled, he may send his servants to arrest them and bring them before him; and that if he hear that persons are riotously together in a certain place, and go thither and find none there, he may leave his servants behind him with a command to arrest them when they shall come. Also it is said, that after a riot is over, any one justice of peace may send his warrant to arrest any person who was concerned in it; and also that he may send him to gaol, till he shall find sureties for his good behaviour.

(a) B. Peace, 7.

Keilw. 41.

Lamb. 181, &c.

Pulton, 26.

Summary, 137.

Crom. 61. C.3.

65.

Dalt. c. 46.

Con. B. Judges,

10.

(b) 8 Co. 121.

Dalt. c. 22, 23.

*Sect. 17.* But it seems to be agreed, that no one (a) justice of the peace hath any power by force of this statute, either to record a riot upon his own view, or to take an inquisition thereof after it is over. Also if one justice of peace, proceeding upon this statute, shall arrest an innocent person as a rioter, it seemeth that he is liable to an action of trespass, and that the party arrested may justify the rescuing of himself, because no single justice of peace is by this statute made a judge of the said offence. (b) But if a riot shall be committed by persons armed in an unusual manner, contrary to the statute of Northampton, and any one justice of peace acting ex officio, in pursuance of the said statute, seize the armour and imprison the offender, and make a record of the whole matter, such a record cannot be traversed, because it is made by one

one acting in a judicial capacity, as appears more at large in the chapter of Affrays: and for the same reason, if a justice of peace, proceeding on the statute of 15 Rich. 2. against Forcible Entries and Detainers, shall, upon his own view, record a riot, which shall be committed in the making of any such forcible entry or detainer, a riot so recorded cannot be traversed, as hath been shewn in the foregoing division. Also if a justice of peace, acting as a judge, by virtue of any statute whatsoever empowering him so to do, make a record upon his view of a riot committed in his presence, such record shall not be traversed; for the law gives such an uncontrollable credit to all matters of record, made by any judge of record as such, that it will never admit of an averment against the truth thereof.

Crompton, 65.  
Lambard, 317.  
Vide *inf.* s. 25.

*Sect.* 18. It hath been questioned, whether a justice of peace be authorized by virtue of the abovementioned statute of 34 Edw. 3. c. 1. to raise the power of the county to suppress a riot? but it seemeth, that by being made a conservator of the peace he hath, by an implication of law, all such powers in relation thereto, as are incident to the office of a conservator of the peace by the common law; and consequently, that he hath a right of demanding the assistance of others to enable him to preserve the peace, in the same manner as every sheriff and constable are empowered to demand such assistance by the common law. However, there seems to be no reason to doubt, but that every justice of peace is authorized by the statute of 17 Rich. 2. c. 8. to raise the power of the county to repress a riot; for by the said statute it is enacted, "That as soon as the sheriffs, and other the king's ministers," under which words all justices of peace clearly to be included, "shall hear of a riot, rout, or other assembly against the peace, they, with the power of the county where such case shall happen, shall disturb such malice with all their power, and shall apprehend all such offenders, and put them in prison, until due execution of the law be made of them; and that the lords and other liege people of the realm shall attend, with their whole strength and power, the sheriffs and ministers aforesaid."

Pult. 25, 26.  
Lambard, 314  
Crompton, 62

3 H. 7. 10.  
3 Inst. 158.  
Vide *supra*.

As to the SECOND POINT, *viz.* How far offences of this nature may be suppressed and punished by two or more justices of peace.

*Sect.* 19. It is enacted by 13 Hen. 4. c. 7. "That if any riot, assembly, or rout of people against the law, be made in parties of the realm, the justices of peace, three or two of them at the least, and the sheriff or under-sheriff of the county where such riot, assembly, or rout shall be made hereafter, shall come with the power of the county (if need be) to arrest them; and shall arrest them; and the same justices and sheriff, or under-sheriff, shall have power to record that which they shall find so done in their presence against the law. And that by the record of the same justices and sheriff, or under-sheriff, such trespassers and offenders shall be convict in the manner and form as is contained in the statute of Forcible Entries."

*Sect.* 20. In the construction of this statute, compared with the abovementioned statute of 17 Rich. 2. c. 8. and also with the statute



statute of 2 Hen. 5. c. 8. it hath been holden, that all persons whatsoever, and even noblemen, and all others of what condition or degree soever they may be, except women, clergymen, persons decrepit, and infants under the age of fifteen years, are bound, under pain of fine and imprisonment, upon reasonable warning, to attend the justices and sheriffs in the execution of the said statute, and not only to arrest the rioters, but also to conduct them to prison.

Pulton, 29.  
Dalt. c. 46.  
Crom. 63.  
Lamb. 116.  
315.

Pop. 120, 121  
Crompton, 62.  
Dalton, c. 46.  
Lambard, 316.

*Sect. 21.* Also it hath been holden, that those who attend the justices, in order to suppress a riot, may take with them such weapons as shall be necessary to enable them effectually to do it, and that they may justify the beating, wounding, and even the killing of such rioters as shall resist, or refuse to surrender themselves.

Lambard, 315,  
316, 318, 319.  
Dalt. c. 46.  
Pulton, 29.  
Crom. 61.

*Sect. 22.* It is said, that the justices of peace are not only empowered by the said statute to raise the power of the county to assist them in suppressing a riot which shall happen within their own view or hearing, but also, that they may safely do it upon a credible information given them of a notorious riot happening at a distance, whether there were any such riot in truth or not; for it may be dangerous for them to stay till they can get certain information of the fact: but they seem to be punishable for alarming the country in this manner, without some such probable ground of their proceeding as would induce a reasonable man to think it necessary and convenient.

Dalt. c. 46.  
Lamb. 316.  
Crom. 63.

*Sect. 23.* It seems clear, from the said statute, that if the justices, &c. in going towards the place where they have heard that there is a riot, shall meet persons coming from thence riotously arrayed, they may arrest them for being assembled together in such an unlawful manner, and also make a record thereof, &c. for the statute extends to all other unlawful assemblies whatsoever, as well as to riots.

Lamb. 316.  
Dalt. c. 46.  
Pulton, 29.  
8 Co. 121.

*Sect. 24.* Also it seems clear, that after the justices have had a view of a riot they may make a record thereof, whether the offenders be in custody at the same time, or have escaped; and it is said that the justices may lawfully, upon a fresh pursuit, arrest such of the offenders as shall have escaped, but that they cannot at another time award any process on such a record, and therefore that they ought to send it to the King's Bench, if any of the offenders escape from a fresh pursuit, and that process shall issue against them from thence: however, there seems to be no doubt, but that any of the same justices who have recorded a riot, or any other justice of peace, may, at any time, by virtue of the abovementioned statute of 34 Edw. 3. c. 1. arrest those who have been notoriously guilty of a riot, in order to compel them to find sureties for their good behaviour.

Wide inf. s. 29.  
Wide sup. 15.  
16.

Raymond, 386.  
Crom. 63. 63.  
Dalton, c. 46.

*Sect. 25.* It seemeth to be certain, that the record of a riot expressly mentioned to have happened within the view of the justices by whom it is recorded, is a conviction of so great authority, that it can no way be traversed, however little ground in truth there might be to affirm that any riot at all was committed,

or

or however innocent the parties may be of the fact recorded against them. And it is said, that if any one be bound by recognizance to keep the peace, and on a *scire facias* thereon, such a record of a riot be produced against him, he shall not only be concluded thereby from pleading the general issue, but also from pleading any matter of justification whatsoever.

Pulton, 29.  
Lamb. 316,  
317.

*Sect. 26.* However it seemeth clear, that if in such a record of a riot it be contained, that the party was guilty therein of a felony, or main, or rescous, the party shall be concluded thereby as to the riot only, and not as to any of the other matters, because the justices of peace have by this statute, a judicial authority over no other offences except riots, routs, and unlawful assemblies.

Lambard, 317.  
Dalton, c. 130.

*Sect. 27.* And inasmuch as such a record is a final conviction of the parties as to all such matters as are properly contained in it, it ought to be certain both as to the time and place of the offence, and the number of persons concerned therein, and the several kinds of weapons made use of by them, and all other circumstances of the fact; for since the parties are concluded from denying the truth of such a record, and have no other remedy to defend themselves against it, but only by taking advantage of the insufficiency of what is contained in it, they may justly demand the benefit of excepting to it, if it do not expressly shew both that they are guilty within the meaning of the statute, and also how far they are guilty, and that the justices have pursued the power given them by the said statute; and from the same ground it seems also to follow, that such a record may be excepted against, if it do not appear to have been made by the sheriff or under-sheriff in concurrence with the justices.

Lambard, 316.  
Dalton, c. 46.

Lambard, 319.  
Raymond, 386.  
Con. Dalt. c. 46.

*Sect. 28.* It is said, that the offenders being under the arrest of the said justices, and also convicted by a record of their offence, ought immediately to be committed to gaol by the same justices, till they shall make fine and ransom to the king, which can be assessed by no other justices of peace except those by whom the record of the offence was made; and by 2 Hen. 5. c. 8. such fine ought to be larger than it was wont to be before that statute, for the support of the charges of the said justices, &c. whereof payment ought to be made by the sheriff, by indenture thereof between him and them.

Lambard, 317.  
Dalton, c. 46.

*Sect. 29.* It is further enacted by the said statute of 13 Hen. 4. c. 7. that if it shall happen, “that such trespassers and offenders be departed before the coming of the said justices and sheriff, and under-sheriff, that the same justices, three or two of them, shall diligently inquire, within a month after such riot, assembly, or rout of people so made, and thereof shall hear and determine according to the law of the land.”

*Sect. 30.* Also it is further enacted by 19 Hen. 7. c. 13. “That the sheriff having a precept directed to him to return a jury in pursuance of 13 Hen. 4. c. 7. shall return twenty-four persons dwelling within the shire where such riot, rout, or unlawful assembly shall be so committed and done, whereof every of them shall have lands and tenements within the same shire, to the yearly value of twenty shillings of charter-land, or freehold, or  
“twenty-six

"twenty-six shillings and eight-pence of copyhold, or of both, over and above all charges, for to inquire of the said riot, rout, or unlawful assembly. And that he shall return upon every person so by him impanelled, in issues at the first day twenty shillings, and at the second day forty shillings, if they appear not, and be sworn to inquire of the premises at the first day. And that the sheriff for every default, &c. shall forfeit twenty pounds, &c."

1 Sid. 186.  
1 Keb. 695.  
Vide supra.  
Lamb. 322.  
Dalt. c. 46.  
Pulton, 29.  
6 Mod. 141.  
Salkeld, 593.

*Sect. 31.* It is not clearly settled, whether the month, within which the justices of peace are confined to take their inquiry by force of these statutes, must be reckoned according to the computation of a lunar or solar month. However, it seems to be agreed, that if the justices give their charge to the jury, and it is said, that if they do but award a precept for the returning of the jury within a lunar month, they may take the verdict afterwards; for the cause being regularly attached in them within the time prescribed by the statute, shall be prosecuted as all other cases ought, with such convenient dispatch as to the judges thereof shall seem proper; and the statute, by obliging the justices to make so speedy an inquiry, meant not to hurry them in the execution of it.

Lamb. 322.  
327.  
Dalton, c. 16.  
Pulton, 29.  
Crompt. 62, 63,  
seems contrary.

*Sect. 32.* It is generally said, that any justice of the county may take such an inquiry, whether they dwell near the place where the riot happened or at a distance, or whether they went to view the riot or not; for the statute ought to be construed as largely as the words will bear, in favour of the justices power in the suppressing of such riots; and therefore those words in the statute, "that the same justices, &c. shall inquire," ought to be thus expounded, that the same justices who were before empowered to raise the *posse*, &c. shall inquire; and it is clear, that any justices in the county are within that part of the statute which gives that power; neither is it any way reasonable to construe the last clause of the said statute, whereby the justices who dwell highest are bound to execute the statute under pain of one hundred pounds, in such a manner as to restrain the jurisdiction of those who, by the foregoing part of the said statute, are authorized to execute it; for if such an exposition should prevail, the negligence of the justices who happen to dwell highest would make the statute wholly ineffectual.

See *Sect. 41.*

Lambard, 3. 1.  
Raymond, 386.  
Salkeld, 593.  
Cathew, 333.

*Sect. 33.* It seems clear from the wording of the abovementioned clause, that the sheriff ought not to join with the justices in taking of such an inquiry, as he ought to do in making a record of a riot upon view.

Lamb. 325.  
328.  
Dalt. c. 46. and  
c. 132.  
Pulton, 26  
Crompton, 67.

*Sect. 34.* Also it seems clear from these words in the statute of 13 Hen. 4. c. 7. "that the same justices shall hear and determine, &c." that they may award process under their own *teste*, against those who shall be indicted before them of any of the offences abovementioned, according to the form of the said statute; and also that they may award the like process for the trial of a traverse of such an inquisition, and do all other things in relation thereunto, which are of course incident to all courts of record.

*Sect.*

*Sect. 35.* But it hath been questioned, whether the justices can safely dismiss the offenders upon their paying such a fine as shall be imposed upon them, without some judgment for their imprisonment as well as fine, inasmuch as the statute of 2 Hen. 5. c. 8. is express, "that all rioters attainted of great and heinous riots, shall have one whole year's imprisonment at the least, without bail, &c." and "that rioters attainted of petit riot shall have imprisonment, as best shall seem to the king or to his council."

Dalt. c. 46.  
Crompton, 61.

*Sect. 36.* Formerly, if the fine imposed upon riots by justices of peace had been too favourable, it was a common practice for the court of Star Chamber afterwards to impose such other fine as might, together with that which was assessed by the justices of peace, be proportionable to the heinousness of the offence; and this was said not to be a double punishment for the same offence, but only an award of due penalty at several times.

Crompton, 63.  
Pulton, 24.  
Dalton, c. 46.  
See 1 Leon.  
282.

*Sect. 37.* It is further enacted by the said statute of 13 Hen. 4. c. 7. "That if the truth cannot be found in the manner as is aforesaid, then within a month then next following, the justices, three or two of them, and the sheriff, or under-sheriff, shall certify before the king and his council all the deeds and the circumstances thereof; which certificate shall be of like force as the presentment of twelve men; upon which certificate the said trespassers and offenders shall be put to answer, and they which shall be found guilty, shall be punished according to the discretion of the king and his council. And if such trespassers and offenders do traverse the matter so certified, the same certificate and traverse shall be sent into the King's Bench, there to be tried and determined, as the law requireth; and if they do not appear before the king and his council, or in the King's Bench, upon such process and proclamation for their appearance as are required by the said statute, they shall be attainted of the riot, &c."

*Sect. 38.* And it is further enacted by 19 Hen. 7. c. 13. "That if a riot, &c. be not found by the jury by reason of any maintenance or embracery of the jurors, then the same justices, &c. over and above such certificate which they must and are bound to make by the said statute of 13 Hen. 4. c. 7. shall in the same certificate certify the names and misdemeanors of such maintainers, &c. on pain that every of the said justices, &c. shall forfeit twenty pounds, if they have no reasonable excuse for not certifying the same; which certificate so made shall be of like force as if the matter were found by verdict of twelve men; and every person duly proved to be such a maintainer, &c. shall forfeit twenty pounds, &c."

*Sect. 39.* In the construction of these statutes it hath been holden, that the certificate required by the abovementioned statutes may be made either by the justices, &c. who went to see the riot, or by those who took the inquiry; but it seems to be most proper, that wherever such an inquisition is taken, such certificate should be made by such justices who made the inquiry, because they, having had the examination of the fact, must needs be

Lamb. 323.  
326.  
Pulton, 29.  
Dalton, c. 46

be best able to judge of the circumstances thereof, and in that respect are the most proper persons to supply the defects of the inquiry. However, the said statute of 19 Hen. 7. c. 13. which is grafted on 13 Hen. 4. c. 7. seems clearly to imply, that some justices are bound in a more especial manner to make such certificate than any others, by imposing the penalty of twenty pounds on those who neglected to make it as they are bound by 13 Hen. 4. c. 7. which part of the statute seems to be most reasonably applied to those justices who took the inquiry; or, in case that no inquiry was taken, to those justices who endeavoured to take one, but by the fault of others were hindered from taking it; for there was no need of such an additional penalty on the neighbouring justices who were bound before to do their duty in executing 13 Hen. 4. c. 7. under pain of forfeiting one hundred pounds, as will be shewn in section forty-four, &c.

Pulton, 29.  
Lambard, 324.  
Dalton, c. 46.

*Sect. 40.* Also it is generally said, that such a certificate must be made within a month after the inquiry. And this seems to be a very reasonable construction where an inquiry has actually been made; but it may happen that no inquiry at all may be taken, either through the default of the sheriff in not returning a jury, or the obstinacy of the jurors in refusing to appear, or the rebellious humour of the people in not suffering the justices to do their duty; in all which cases a certificate seems to be required, both by the intent and letter of the statute, the words whereof, as to this purpose, are, "If the truth cannot be found in the manner as is aforesaid, then within a month then next following, the justices, &c. shall certify, &c." And therefore in these cases it seems proper to make a certificate of the obstructions which prevented the taking of such an inquiry, within a month after they happen.

Lambard, 321  
C. Crompton, 63  
Dalt. c. 16. &  
103.  
B. Prem. 1.

*Sect. 41.* It seemeth clear from the plain words of the statute, that the certificate ought to be made to the privy council board, which is clearly distinguished both from the chancery, and also from the king's bench, which in some statutes relating to judicial proceedings are taken for the king's council.

Pulton, 22.  
Crompton, 63  
Lamb, 325,  
326.  
Dalton, c. 16.

*Sect. 42.* It is said, that if there be variance between the inquisition and the certificate, that shall be taken which is most for the king's advantage; and therefore if the inquisition be of a riot by ten persons, and the certificate be of a riot by twenty, or by ten in harness, or of a battery joined with a riot, that the certificate shall be preferred, because the fine to the king shall be greater; but if they differ only as to the time, it is said that the inquisition shall be preferred.

Dalton, c.  
& c. 130.  
Lamb, 321  
322.

*Sect. 43.* Also it seemeth certain, that such a certificate, being in the nature of an indictment at common law, ought to comprehend the certainty of time, place, and persons, and other material circumstances, both of the riots and maintenance, &c. but perhaps it need not express the additions of the offenders.

*Sect. 44.* It is further enacted by the said statute of 13 Hen. 4. c. 7. "That the justices of peace dwelling highest in every county where such riot, assembly, or rout of people shall be made

“made hereafter, together with the sheriff or under-sheriff of the same county, and also the justices of assizes, for the time that they shall be there in their session, in case that any such riot, assembly, or rout be made in their presence, shall do execution of this statute, every one upon pain of one hundred pounds, to be paid to the king as often as they shall be found in default of the execution of the same statute.”

In the construction of this clause the following opinions have been holden :

*Sect. 45.* FIRST, That no justice of peace is in danger of incurring the penalty thereof, unless he dwell in the county whereto a riot happens. Lambard, 236.  
Crompton, 63.  
Dalton, c. 46.

*Sect. 46.* SECONDLY, That if any justices of peace, who do not dwell nearest to the place, do actually execute the statute, they excuse all the rest. Dalton, c. 46.  
Lambard, 326.  
Crompton, 63.

*Sect. 47.* THIRDLY, That if the justices whose dwelling was nearest at the time of the riot, or one of them, happen to die within the month, those whose dwelling is thereby become the nearest, are bound to execute the statute in the same manner as the others were. Pulton, 30.  
Crompton, 62.

*Sect. 48.* FOURTHLY, That notwithstanding those justices only who dwell nearest are liable to the penalty of the statute, yet if any others, on notice, neglect to supply their default, they are finable at discretion. Lambard, 327.  
Dalton, c. 46.  
Pulton, 30.

*Sect. 49.* FIFTHLY, That if the two justices, or one of them, do their duty in executing, or endeavouring to execute the statute, they shall not incur any penalty through a default of the sheriff, &c. either in refusing to appear, or to return a jury, &c. Crompton, 63.  
Lambard, 327.  
Dalton, c. 46.  
Pulton, 30.

*Sect. 50.* SIXTHLY, That the said justices, &c. shall not avoid the penalty by executing the statute in part only, as by recording a riot without committing the parties. Crompton, 61.

*Sect. 51.* SEVENTHLY, That no justice, &c. is subject to the penalty of the said statute on account of a petit riot, but only of such riots as are notorious, and in the nature of insurrections and rebellious. • Dalton, c. 46.

*Sect. 52.* EIGHTHLY, That if a justice of peace, &c. had no express notice given him of the riot, he shall be excused, unless it were so very flagrant that by common intendment every one dwelling near it could not but have notice thereof. Dyer, 210.  
Lambard, 328.  
Pulton, 28.  
Crompton, 62.  
Dalton, c. 46.

*Sect. 53.* NINTHLY, That the acquiescence or agreement of the parties aggrieved is no excuse to the justices, because they ought, *ex officio*, to make the inquiry, and make proclamation whether any will give evidence for the king, &c. and may bind such of the the parties grieved, as shall refuse to prosecute their complaint, to their good behaviour. Crompton, 61.  
Lambard, 322.  
Pulton, 28.  
Dalton, c. 46.  
Crompton, 64.

*Sect. 54.* Also it is further enacted by 2 Hen. 5. c. 8. “That upon any default of the said justices, &c. touching the  
“ execution

"execution of 13 Hen. 4. a commission shall be awarded at the instance of the party grieved, to inquire as well of the truth of the case as of the default of the said justices, &c. and that the said commissioners shall presently return into chancery the inquest before them taken; and that the jurors, who shall make inquiry, shall be worth 10*l.* per annum, and shall be returned by the coroners, if the sheriff, supposed to be in default, continue in his office, &c." See the statute.

*Sect. 55.* And it is further enacted by 2 Hen. 5. c. 9. and 8 Hen. 6. c. 14. "That the lord chancellor, upon complaint made to him that a dangerous rioter is fled into places unknown, and also upon a suggestion, under the seals of two justices of peace and the sheriff, that the common fame and voice runneth in the county of the riot, may award a *capias* against the party, returnable in chancery, upon a certain day, and afterwards a writ of proclamation returnable in the king's bench, &c."

*Felonious Riots, by remaining together to the number of Twelve after Proclamation made to disperse.*

*Sect. 56.* But all the penalties of the above-mentioned statutes having been found by experience not to be sufficient to restrain the rage of the populace from breaking out into dangerous tumults, whenever they happen to be persuaded that they lie under any real or pretended grievance, it was thought necessary to make a further provision against such insolent disturbances of the peace, by more severe law; and to this end by the Riot Act, 1 Geo. 1. st. 2. c. 5. it is recited, "That of late many rebellious riots and tumults have been in divers parts of this kingdom, to the disturbance of the public peace, and the endangering of his majesty's person and government, and the same are yet continued and fomented by persons disaffected to his majesty, presuming so to do, for that the punishments provided by the laws now in being are not adequate to such heinous offences; and by such rioters his majesty and his administration have been most maliciously and falsely traduced, with an intent to raise divisions, and to alienate the affections of the people from his majesty: therefore for the preventing and suppressing of such riots and tumults, and for the more speedy and effectual punishing the offenders therein," it is enacted, "That if any persons to the number of twelve (1) or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor, bailiff or bailiffs, or other head-officer, or justice of the peace of any city or town-corporate, where such assembly shall be, by proclamation

"to

Riot Act,  
1 Geo. 1. c. 5.

Twelve persons or more, unlawfully assembled, and not dispersing after commanded by one justice, &c. by proclamation, adjudged felons without benefit of clergy.

(1) It is not perfectly clear from the penning of the act, whether it is necessary that there should be twelve or more rioters in order to entitle the party injured to his action against the hundred. (*Vide* sect. 59.) But, according to the most obvious construction, that number is not necessary to constitute the felony created by sect. 4.—*Douglas*,

700. And in the case of *Pritchard v. Waldron*, 5 Term Rep. 14. it is said to have been solemnly determined in the case of the rioters in the year 1780, that it is not necessary that twelve persons should be assembled to constitute a capital crime on the 4th clause of this statute.

“ to be made in the king’s name, in the form hereinafter directed,  
 “ to disperse themselves, and peaceably to depart to their habi-  
 “ tations, or to their lawful business, shall, to the number of  
 “ twelve or more, (notwithstanding such proclamation made) un-  
 “ lawfully, riotously, and tumultuously remain or continue toge-  
 “ ther by the space of one hour after such command or request  
 “ made by proclamation, that then such continuing together to  
 “ the number of twelve or more, after such command or request  
 “ made by proclamation, shall be adjudged felony without bene-  
 “ fit of clergy, and the offenders therein shall be adjudged felons,  
 “ and shall suffer death as in case of felony without benefit of  
 “ clergy.”

† *Sect. 2.* By 1 Geo. 1. st. 2. c. 5. s. 2. it is enacted, “ That  
 “ the order and form of the proclamations that shall be made by  
 “ the authority of this act, shall be as hereafter followeth (that is  
 “ to say) the justice of the peace, or other person authorized by  
 “ this act to make the said proclamation, shall, among the said  
 “ rioters, or as near to them as he can safely come, with a loud  
 “ voice command, or cause to be commanded, silence to be while  
 “ proclamation is making, and, after that, shall openly and with  
 “ loud voice make or cause to be made proclamation in these  
 “ words, or like in effect:

How the procla-  
 mations shall  
 be made.

“ “ Our sovereign lord the king chargeth and commandeth all  
 “ persons, being assembled, immediately to disperse themselves,  
 “ and peaceably to depart to their habitations, or to their lawful  
 “ business, upon the pains contained in the act made in the first  
 “ year of King George, for preventing tumults and riotous as-  
 “ semblies.

The proclama-  
 tion.

“ God save the king.”

“ And every such justice and justices of the peace, sheriff, under-  
 “ sheriff, mayor, bailiff, and other head-officer, aforesaid, within  
 “ the limits of their respective jurisdictions, are hereby autho-  
 “ rized, empowered, and required, on notice or knowledge of any  
 “ such unlawful, riotous, and tumultuous assembly, to resort to  
 “ the place where such unlawful, riotous, and tumultuous assem-  
 “ blies shall be, of persons to the number of twelve or more, and  
 “ there to make, or cause to be made, proclamation in manner  
 “ aforesaid.”

Justices, &c. to  
 resort to the  
 place.

† *Sect. 3.* By 1 Geo. 1. st. 2. c. 5. s. 3. it is further enacted,  
 “ That if such persons so unlawfully, riotously, and tumultu-  
 “ ously assembled, or twelve or more of them, after proclamation  
 “ made in manner aforesaid, shall continue together and not dis-  
 “ perse themselves within one hour, that then it shall and may  
 “ be lawful to and for every justice of the peace, sheriff, or under-  
 “ sheriff of the county where such assembly shall be, and also to  
 “ and for every high and petty constable, and other peace-officer  
 “ within such county, and also to and for every mayor, justice of  
 “ the peace, sheriff, bailiff, and other head-officer, high or petty  
 “ constable, and other peace-officer of any city or town corporate  
 “ where such assembly shall be, and to and for such other per-  
 “ son and persons as shall be commanded to be assisting unto  
 “ any such justice of the peace, sheriff, or under-sheriff, mayor,  
 “ bailiff,

Persons so as-  
 sembled and  
 not dispersing  
 within an hour,  
 to be seized.



And if they make resistance, the persons killing them, &c. to be indemnified.

“bailiff, or other head-officer aforesaid, (who are hereby authorized and empowered to command all his majesty’s subjects of age and ability to be assisting to them therein,) to seize and apprehend, and they are hereby required to seize and apprehend, such persons so unlawfully, riotously and tumultuously continuing together after proclamation made as aforesaid, and forthwith to carry the persons so apprehended before one or more of his majesty’s justices of the peace of the county or place where such persons shall be so apprehended, in order to their being proceeded against for such their offences according to law, and that if the persons so unlawfully, riotously and tumultuously assembled, or any of them, shall happen to be killed, maimed or hurt, in the dispersing, seizing or apprehending, or endeavouring to disperse, seize or apprehend them, by reason of their resisting the persons so dispersing, seizing or apprehending, or endeavouring to disperse, seize or apprehend them, that then every such justice of the peace, sheriff, undersheriff, mayor, bailiff, head-officer, high or petty constable, or other peace-officer, and all and singular persons, being aiding and assisting to them, or any of them, shall be free, discharged and indemnified, as well against the king’s majesty, his heirs and successors, as against all and every other person and persons, of, for, or concerning the killing, maiming, or hurting of any such person or persons so unlawfully, riotously and tumultuously assembled, that shall happen to be so killed, maimed or hurt as aforesaid.”

Pulling down, &c. any church, &c. felony without benefit of clergy. 1 W. & M. sess. 1 c. 18.

4 Burr. 2073.

Opposing, &c. the making such proclamation, felony without benefit of clergy. See 4 Burr. 2073.

† Sect. 4. By 1 Geo. 1. st. 2. c. 5. s. 4. it is further enacted, “That if any persons unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace, shall unlawfully and with force demolish or pull down, or begin to demolish or pull down any church or chapel, or any building for religious worship certified and registered according to the statute made in the first year of the reign of the late King William and Queen Mary, intituled, ‘An act for exempting their majesties protestant subjects dissenting from the church of England, from the penalties of certain laws,’ or any dwelling-house, barn, stable or other out-house, that then every such demolishing, or pulling down, or beginning to demolish or pull down, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy.”

† Sect. 5. By 1 Geo. 1. st. 2. c. 5. s. 5. it is provided, “That if any person or persons do, or shall, with force and arms, wilfully and knowingly, oppose, obstruct, or in any manner wilfully and knowingly let, hinder, or hurt any person or persons that shall begin to proclaim, or go to proclaim according to the proclamation hereby directed to be made, whereby such proclamation shall not be made, that then every such opposing, obstructing, letting, hindering, or hurting such person or persons, so beginning or going to make such proclamation as aforesaid, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy; and that

‘ that also every such person or persons so being unlawfully, riotously and tumultuously assembled, to the pumber of twelve as aforesaid, or more, to whom proclamation should or ought to have been made if the same had not been hindered as aforesaid, shall likewise, in case they or any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such let or hinderance so made, having knowledge of such let or hinderance so made, shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy.”

And persons so assembled, if the proclamation be hindered, shall nevertheless suffer as felons.

† Sect. 6. By 1 Geo. 1. st. 2. c. 5. s. 6. it is enacted, “ That if any such church or chapel, or any such building for religious worship, or any such dwelling-house, barn, stable, or other out-house, shall be demolished or pulled down wholly, or in part, by any persons so unlawfully, riotously and tumultuously assembled, that then, in case such church, chapel, building for religious worship, dwelling-house, barn, stable, or out-house, shall be out of any city or town, that is either a county of itself, or is not within any hundred, that then the inhabitants of the hundred in which such damage shall be done, shall be liable to yield damages to the person or persons injured and damnified by such demolishing or pulling down wholly or in part; and such damages shall and may be recovered by action to be brought in any of his majesty’s courts of record at Westminster (wherein no essoign, protection or wager of law, or any imparlance shall be allowed), by the person or persons damnified thereby, against any two or more of the inhabitants of such hundred, such action for damages to any church or chapel to be brought in the name of the rector, vicar, or curate of such church or chapel that shall be so damnified, in trust for applying the damages to be recovered in rebuilding or repairing such church or chapel; and that judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, be raised and levied on the inhabitants of such hundred, and paid to such plaintiff or plaintiffs, in such manner and form, and by such ways and means, as are provided by the statute made in the seven-and-twentieth year of the reign of Queen Elizabeth, for reimbursing the person or persons on whom any money recovered against any hundred by any party robbed, shall be levied: And in case any such church, chapel, building for religious worship, dwelling-house, barn, stable, or out-house, so damnified, shall be in any city or town that is either a county of itself, or is not within any hundred, that then such damages shall and may be recovered by action to be brought in manner aforesaid (wherein no essoign, protection or wager of law, or any imparlance shall be allowed), against two or more inhabitants of such city or town; and judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, made to the justices of the peace of such city or town, at any quarter-sessions to be holden for the said city or town, be

How the damages shall be made good, if any church, &c. be demolished, &c.

As to costs in an action founded on this clause see 2 Wils. 91.

27 Eliz. c. 13.

"raised and levied on the inhabitants of such city or town, and  
 "paid to such plaintiff or plaintiffs, in such manner and form, by  
 "such ways and means, as are provided by the said statute made  
 "in the seven-and-twentieth year of the reign of Queen Eliza-  
 "beth, for reimbursing the person or persons on whom any  
 "money recovered against any hundred by any party robbed,  
 "shall be levied."

Act to be read  
 at quarter-ses-  
 sions, &c.

† *Sect. 7.* By 1 Geo. 1. st. 2. c. 5. s. 7. it is further enacted,  
 "That this act shall be openly read at every quarter-sessions,  
 "and at every leet or law-day."

Prosecution  
 within twelve  
 months.

† *Sect. 8.* By 1 Geo. 1. st. 2. c. 5. s. 8. it is provided, "That  
 "no person or persons shall be prosecuted by virtue of this act,  
 "for any offence or offences committed contrary to the same,  
 "unless such prosecution be commenced within twelve months  
 "after the offence committed."

Sheriffs, &c. in  
 Scotland to have  
 the same power  
 as justices, &c.  
 have in  
 England.

† *Sect. 9.* By 1 Geo. 1. st. 2. c. 5. s. 9. it is further enacted,  
 "That the sheriffs and their deputies, stewards and their depu-  
 "ties, bailiffs of regalities and their deputies, magistrates of  
 "royal boroughs, and all other inferior judges and magistrates;  
 "and also all high and petty constables, or other peace-officers  
 "of any county, stewartry, city or town, within that part of Great  
 "Britain called Scotland, shall have the same powers and autho-  
 "rity for putting this present act in execution within Scotland as  
 "the justices of the peace, and other magistrates aforesaid,  
 "respectively have by virtue of this act, within and for the other  
 "parts of this kingdom; and that all and every person and per-  
 "sons who shall at any time be convicted of any the offences  
 "afore-mentioned, within that part of Great Britain called Scot-  
 "land, shall for every such offence incur and suffer the pain of  
 "death and confiscation of moveables: And also that all pro-  
 "secutions for repairing the damages of any church or chapel,  
 "or any building for religious worship, or any dwelling-house,  
 "barn, stable, or out-house, which shall be demolished or pulled  
 "down in whole or in part, within Scotland, by any persons un-  
 "lawfully, riotously or tumultuously assembled, shall and may  
 "be recovered by summary action, at the instance of the party  
 "aggrieved, his or her heir or executors, against the county,  
 "stewartry, city, or borough, respectively, where such disorders  
 "shall happen, the magistrates being summoned in the ordinary  
 "form, and the several counties and stewartries called by edictal  
 "citation at the market-cross of the head borough of such county  
 "or stewartry respectively, and that in general, without mention-  
 "ing their names and designations."

Punishment of  
 persons of-  
 fending in  
 Scotland.

Damages of any  
 churches, &c.  
 pulled down,  
 &c. in Scotland,  
 how to be re-  
 covered, and of  
 whom.

To what places  
 in Scotland  
 this act shall  
 extend.

† *Sect. 10.* By 1 Geo. 1. st. 2. c. 5. s. 10. it is provided,  
 "That this act shall extend to all places for religious worship in  
 "that part of Great Britain called Scotland, which are tolerated  
 "by law, and where his majesty King George, the prince and  
 "princess of Wales, and their issue, are prayed for in express  
 "words."

Felony without  
 benefit of  
 clergy, to demo-

† *Sect. 11.* By 9 Geo. 3. c. 29. "If any person or persons  
 "unlawfully, riotously and tumultuously assembled together, to  
 "the

“ the disturbance of the public peace, shall unlawfully, and with  
 “ force, demolish or pull down, or begin to demolish or pull  
 “ down, any wind saw-mill, or other wind-mill, or any water-mill,  
 “ or other mill which shall have been or shall be erected, or any  
 “ of the works thereto respectively belonging; that then every  
 “ such demolishing or pulling down, or beginning to demolish or  
 “ pull down, shall be adjudged felony without benefit of clergy,  
 “ and the offenders therein shall be adjudged felons, and shall  
 “ suffer death, as in case of felony without benefit of clergy.”

fish any wind-  
mill or water-  
mill.

† Sect. 12. It hath been determined, that if a person be present at a riot, and encourage and abet the rioters in beginning to demolish and pull down a dwelling-house, by shouting and using expressions to excite the mob so to do, he is a principal in the second degree, and as such ousted of his clergy by the 1 Geo. 1. st. 2. c. 5. although he do not with force begin to demolish or pull down, or do any act with his own hands or person for that purpose otherwise than as aforesaid; for these acts amount to an aiding and abetting within the meaning of the statute.

Rex v. Royce,  
Easter, 7 Geo. 3.  
in B. R.  
4 Bur. Rep.  
2073.

† Sect. 13. It is also determined, that it is not necessary that twelve persons should be assembled to constitute a capital crime in the fourth clause of the riot act.

Pritchard v.  
Waldron,  
5 Term Rep. 14.  
See also Dougl.  
700.

#### *Seditious Assemblies.*

† Sect. 1. It is enacted by 13 Car. 2. c. 5. “ That no person or persons whatsoever shall solicit, labour, or procure the  
 “ getting of hands, or other consent of any persons above the  
 “ number of twenty, to any petition, complaint, remonstrance,  
 “ declaration, or other address to the king, or both, or either  
 “ houses of parliament, for alteration of matters established by  
 “ law in church or state, unless the matter thereof have been first  
 “ consented unto, and ordered by three or more justices of that  
 “ county, or by the major part of the grand jury of the county, or  
 “ division of the county, where the same matter shall arise, at  
 “ their public assizes, or general quarter-sessions, or if arising in  
 “ London, by the lord mayor, aldermen, and common council assembled; and that no person or persons whatsoever shall repair to his majesty, or both, or either the house of parliament  
 “ upon pretence of delivering any petition, complaint, remonstrance, or declaration, or other addresses, accompanied with  
 “ excessive number of people, nor at any one time with above  
 “ the number of ten people, upon pain of incurring a penalty not  
 “ exceeding one hundred pounds and three months imprisonment,  
 “ on conviction, by two witnesses, within six months, at the king’s  
 “ bench, assizes, or quarter sessions. But this act shall not prevent the presentation of any public or private grievance to any  
 “ member of parliament, by any number not exceeding twenty,  
 “ to the king, for any remedy to be had thereupon.” (1)

Noy, 101.  
2 Croke, 37.  
Moor, 755.  
4 Comm. 147.

By

(1) N. B. By 1 Will. & Mary, sess. 2. c. 2. s. 1. art. 5. usually styled the Bill of Rights, it is enacted, “ That it is the right of the subjects to  
 “ petition the king, and that all commitments and  
 “ prosecutions for such petitioning are illegal.” On the trial of Lord George Gordon, it was contended

that this article had virtually repealed the above statute of Charles; but Lord Mansfield declared it was the unanimous opinion of the Court, that neither that, nor any other act of parliament, had repealed it, and that it was in full force. Douglas, 592, 593.

(a) Vide title  
"Conspiracy,"  
Ch. 27.

By the statute 39 Geo. 3. c. 79. reciting the existence of a traiterous conspiracy to overturn the government, and the institution of various societies confederated by unlawful oaths, &c: is enacted by sect. 2. "That from and after the passing of that act, all and every the said societies, and also every other society now established, or hereafter to be established, the members whereof shall, according to the rules thereof, or to any provision or agreement for that purpose, be required or admitted to take any oath or engagement which shall be an unlawful oath or engagement within the intent and meaning of an act passed in the thirty-seventh (a) year of his majesty's reign, intituled 'An act for more effectually preventing the administering or taking of unlawful oaths, or to take any oath not required or authorized by law;' and every society, the members whereof, or any of them, shall take or in any manner bind themselves by any such oath or engagement, on becoming or in consequence of being members of such society; and every society, the members whereof shall take, subscribe, or assent to any test or declaration not required by law, or not authorized in manner hereinafter mentioned; and every society, of which the names of the members, or of any of them, shall be kept secret from the society at large, or which shall have any committee or select body so chosen or appointed, that the members constituting the same shall not be known by the society at large to be members of such committee or select body, or which shall have any president, treasurer, secretary, delegate, or other officer so chosen or appointed, that the election or appointment of such persons to such offices, shall not be known to the society at large, or of which the names of all the members, and of all committees or select bodies of members, and of all presidents, treasurers, secretaries, delegates, and other officers, shall not be entered in a book or books to be kept for that purpose, and to be open to the inspection of all the members of such society; [and every society which shall be composed of different divisions or branches, or of different parts, acting in any manner separately or distinct from each other, or of which any part shall have any separate or distinct president, secretary, treasurer, delegate, or other officer, elected or appointed by or for such part, or to act as an officer for such part, shall be deemed and taken to be unlawful combinations and confederacies;] and every person who, from and after the passing of this act, shall become a member of any such society, or who, being a member of any such society at the passing of this act, shall afterwards act as a member thereof; and every person who, after the passing of this act, shall directly or indirectly maintain correspondence or intercourse with any such society, or with any division, branch, committee, or other select body, president, treasurer, secretary, delegate, or other officer or member thereof as such, or who shall, by contribution of money or otherwise, aid, abet, or support such society, or any members or officers thereof as such, shall be deemed guilty of an unlawful combination and confederacy." By sect. 3. it was not to extend to those societies whose declarations were approved of by two magistrates and registered with the clerk of the peace, according

cording to the direction of that act. Nor, by sect. 5., to lodges of free-masons, provided two of the members, confessing the same, should certify upon oath before any justice that such society or lodge had been usually held before the passing of the act, under the denomination of a Lodge of Freemasons, and in conformity to the rules prevailing in the lodges of freemasons in this country; which certificate is also to be registered with the clerk of the peace, and the mode of registering declared by the act. The 8th sect. then enacts, "That every person who, at any time after the passing of this act, shall, in breach of the provisions thereof, be guilty of any unlawful combination and confederacy as in this act is described shall and may be proceeded against for such offence in a summary way, either before one or more justice or justices of the peace for the county, stewardry, riding, division, city, town, or place, where such person shall happen to be, or by indictment to be preferred in the county, riding, division, city, town, or place in England wherein such offence shall be committed, or by indictment in the court of judicature, or in any of the circuit courts, in Scotland, if the offence shall be committed in Scotland; and every person being convicted of any such offence, on the oath of one or more credible witness or witnesses, by such justice or justices as aforesaid, shall be by him or them committed to the common gaol or house of correction for such county, stewardry, riding, division, city, town, or place, there to remain, without bail or mainprize, for the term of three calendar months, or shall be by such justice or justices adjudged to forfeit and pay the sum of twenty pounds, as to such justice or justices shall seem meet; and in case such sum of money shall not be forthwith paid into the hands of such justice or justices, he or they shall, by warrant under his or their hand and seal, or hands and seals, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale, and for want of sufficient distress, shall commit such offender to the common gaol or house of correction of such county, stewardry, riding, division, city, town, or place as aforesaid, for any time not exceeding three calendar months; and every person convicted of any such offence, upon indictment by due course of law, shall and may be transported for the term of seven years, in the manner provided by law for transportation of offenders, or imprisoned for any time not exceeding two years, as the court before whom such offenders shall be tried shall think fit; and every such offender, who shall be ordered to be transported, shall be subject and liable to all laws concerning offenders ordered to be transported." By sect. 9. the justice has a power of mitigating the punishment not less than one third directed by the act. Nothing in the act was to prevent a person from being indicted, if he might have been so indicted if that act had not been made, unless the offender should have been prosecuted under that act. Sect. 13. inflicts a penalty of five pounds upon any person knowingly suffering a meeting of any such society in their house or room, for the first offence; and for any such offence after the date of the first conviction, to be

be deemed guilty of an unlawful combination and confederacy in breach of that act. Sect. 15. directs all rooms for lectures, debates, and reading rooms to be licensed by two justices of the peace, under their hands and seals, at a special or general sessions; and persons opening such rooms without such license are subject to a penalty of £20. And if it be proved upon oath that such places are used for lectures of a seditious or tendency, two justices may declare the license forfeited.—S. 20. The act also contains other regulations for the press, and directs all printing presses to be licensed, with pecuniary and other penalties for the omission.

By st. 57 Geo. 3. c. 19. and 60 Geo. 3. c. 6. various provisions were enacted for preventing seditious and tumultuous meetings; but as these laws were enacted for a limited time, and not permanently, they are not here inserted: they will be found accurately abridged in 5 Burn's Justice, tit. Riot. (Chetwynd's edit.)

#### *Moss-Trooping.*

- 4 Jac. 1. c. 1.
- 7 Jac. 1. c. 1.
- 3 Inst. 66. 67.
- 3 Burn. 231,
- 232.
- 4 Com. 243.

By 43 Eliz. c. 13. it is recited, that "Many of the queen's subjects, dwelling in the counties of Cumberland, Westmoreland, and the bishopric of Durham, had been taken, some from their own houses, and others in travelling on the highway, or otherwise, and carried away as prisoners, and kept barbarously and cruelly, until they had been redeemed by great ransoms; and also, that then of late time there had been many incursions, robberies, and burning and spoiling of towns, villages, and houses, within the said counties, so that divers of the queen's subjects, in the said counties, had been enforced to pay a certain rate of money, corn, cattle, or other consideration, commonly called *black mail*, to divers inhabiting upon or near the borders, being men of name, and friended and allied with divers in those parts, who were commonly known to be great robbers and spoil-takers within the said counties, to the end thereby to be by them protected from the danger of such as used to rob and steal in those parts;" and thereupon it is enacted by 43 Eliz. c. 13. "That whosoever shall at any time hereafter, "without good and lawful warrant or authority, take any of her "majesty's subjects against his or their will or wills, and carry "them out of the same counties, or detain, force, or imprison "him or them as prisoners, or against his or their wills, to ransom "them, or to make prey or spoil of his or their person, or goods, "upon deadly feud or otherwise: or whosoever shall be privy, "consenting, aiding, or assisting unto any such taking, detaining "or carrying away, or procure the taking, detaining, or carrying "away of any such person or persons, prisoners as aforesaid: or "whosoever shall take, receive, or carry, to the use of himself, "or wittingly to the use of any other, any money, corn, cattle, or "other consideration, commonly called *black mail*, for the pro- "tecting, or defending of him or them, or his or their lands, "tenements, goods, or chattels, from such thefts, spoils, and rob- "beries, as is aforesaid: or whosoever shall give any such money, "corn, cattle, or other consideration, called *black-mail*, for such "protection

protection as is aforesaid, and shall be of the said several offences, or any of them, indicted and lawfully convicted, or shall stand mute, or shall challenge peremptorily above the number of twenty before the justices of assizes, justices of gaol-delivery, justices of oyer and terminer, or justices of peace, within any of the said counties at some of their general sessions within some of the said counties to be holden, shall be reputed, adjudged, and taken to be as felons, and shall suffer pains of death, without benefit of clergy, &c."

† *Sect. 2.* By 13 and 14 Car. 2. c. 22. made a public act by Geo. 2. c. 37. and perpetual by 31 Geo. 2. c. 42. "The justices of the peace of the respective counties of Cumberland and Northumberland, or the major part of them, at any general sessions, may in open court make an order for charging the inhabitants, proportionally, for the securing the said several counties from the depredations of the moss-troopers; so as Northumberland be not charged above £500, nor Cumberland above £200, a year; and they may appoint thirty men in Northumberland, and twelve men in Cumberland, under respective commanders, to apprehend offenders, under pain of fine and imprisonment for neglect of duty. But vide 29 and 30 Car. 2. c. 2. which obliges the justices to take security, &c."

### *Unlawful Hunting and Poaching.*

By 1 Hen. 7. c. 7. "That many great outrages, murders, insurrections and rebellions had often been occasioned by persons in great numbers with painted faces, visors, and otherwise disguised, and riotously, and in manner of war arrayed, hunting as well by night as by day;" and thereupon it is enacted, "That as often as information shall be made of any such unlawful huntings by night, or with painted faces, to any of the king's council, or to any justice of the peace of the county, of any person suspected thereof, any of the same council, or justices to whom such information shall be made, may make a warrant to arrest such person, and may also examine him of the said hunting, and of the said doers in that behalf; and if the same person wilfully conceal the said huntings, or any person with him defective therein, that then the same concealment be felony: and if he then confess the truth, and all that he shall be examined of, and knoweth in that behalf, that then the said offences of huntings be against the king but trespass fineable, by reason of the same confession, at the next general sessions of the peace to be holden in the same county by the king's justices of the same sessions, there to be sessed. And if rescous or disobedience be made to any person having authority to do execution or justice by any such warrant, by any person, the which so should be arrested, so that the execution of the same warrant thereby be not had, that then the same rescous and disobedience be felony; and if any person or persons shall be convict of any such huntings, with painted faces, visors, or otherwise disguised, to the intent they should not

3 Ed. 1. c. 20.  
21 Edw. 1.  
c. 362.  
3 Inst. 76, 77.  
Dalt. c. 29.  
1 Hale, 656 to  
659.  
2 Roll. 120.  
133.  
Co. Lit. 370.  
2 Burn, 263.

"be



"be known, or of unlawful hunting in time of night, that then the same person or persons so convict, to have like punishment, as he or they should have if he or they were convict of felony."

N. B. The several facts mentioned in this act are not to be taken as being parts of the same offence; but are every of them several offences.  
Lord Hard.  
wicke, B. R.  
H. 219.  
(a) C. Eliz.  
548.  
C. Jac. 195.  
2 Bac. Ab. 614.

† Sect. 2. By 9 Geo. 1. c. 22. made perpetual by 31 Geo. 2. c. 22. "If any person or persons, being armed with swords, fire-arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer have been; or shall be usually, kept; or in any high road, open heath, common, or down,—or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer—or unlawfully rob any warren (a) or place where conies or hares are usually kept;—or shall unlawfully steal or take away any fish out of any pond or river. Or if any person or persons (whether armed and disguised or not) shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, fed or kept in any places in any of the king's forests or chases, which are or shall be inclosed with pales, rails, or other fences, or in any park, paddock, or grounds inclosed, where any deer have been or shall be usually kept; or shall forcibly rescue any person being lawfully in custody of any officer or other person for any of the offences before-mentioned;—or, if any person or persons shall by gift or promise of money, or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act; every person so offending, being thereof lawfully convicted (in any county in England) shall suffer death without benefit of clergy—(clergy is restored to these offences by stat. 4 Geo. 4. c. 54.; and the punishment is, to be transported for seven years, or imprisoned for three years, with or without hard labour, at the discretion of the court)—but not to work corruption of blood nor forfeiture of land or goods."

Entering grounds to kill game, a misdemeanor subject to seven years transportation or imprisonment.

The statute 57 Geo. 3. c. 90. intituled "An act for the prevention of persons going armed by night for the destruction of game; and for repealing an act made in the last session of parliament, relating to rogues and vagabonds," recites, that "whereas idle and disorderly persons frequently go armed in the night-time for the purpose of protecting themselves, and aiding and abetting and assisting each other in the illegal destruction of game or rabbits; and whereas such practices are found by experience to lead to the commission of felonies and murders:" and then, for more effectual suppression thereof, it is enacted, "That if any person or persons having entered into any forest, chase, park, wood, plantation, close, or other open or inclosed ground, with the intent illegally to destroy, take, or kill game or rabbits, or with the intent to aid, abet, and assist any person or persons illegally to destroy, take, or kill, game or rabbits, shall be found at night, that is to say, between the hours of six in the evening and seven in the morning, from the first day of October to the first day of February, between seven in the evening and five in the morning, from the first day of February to the first day of April,

April, and between nine in the evening and four in the morning for the remainder of the year, armed with any gun, cross-bow, fire-arms, bludgeon, or any other offensive weapon, every such person so offending, being thereof lawfully convicted, shall be adjudged guilty of a misdemeanour, and shall be sentenced to transportation for seven years, or shall receive such other punishment as may by law be inflicted on persons guilty of misdemeanour, and as the court before which such offenders may be tried and convicted shall adjudge; and if any such "offender or offenders shall return into Great Britain before the "expiration of the term for which he or they shall be so transported, contrary to the intent and meaning hereof, he or they "so returning, and being thereof duly convicted, shall be adjudged "guilty of felony, and shall be sentenced to transportation for the "term or terms of his or their natural life or lives."

By statute 3 Geo. 4. c. 114. the court may also add a sentence of hard labour to the imprisonment inflicted on offenders under this act.

*Riotously preventing Ships being Loaded.*

By 33 Geo. 3. c. 67. it is recited, "That many seamen, keelmen, casters, and ship carpenters, have of late assembled themselves in great numbers, and have committed many acts of violence; which practices, if continued, may occasion great loss and damage to individuals, and injure the trade and navigation of this kingdom:" for the better preventing such violent and injurious practices, and more effectually punishing such offenders, it is enacted, "That if any seamen, keelmen, casters, ship-carpenters, or other "persons, riotously assembled together to the number of three "or more, shall unlawfully and with force prevent, hinder, or obstruct the loading or unloading, or the sailing or navigating, of "any ship, keel, or other vessel, or shall unlawfully and with "force board any ship, keel, or other vessel, with intent to prevent, hinder, or obstruct the loading or unloading, or the sailing "or navigating of such ship, keel, or other vessel, every seaman, "keelman, caster, ship carpenter, and other person, being lawfully convicted of any of the offences aforesaid, upon any indictment to be found against him, her, or them, in any court of oyer and terminer, or general quarter-sessions of the peace, to be holden respectively in and for the county, shire, riding, division, or district, wherein the offence was committed, shall be committed either to the common gaol for the same county, shire, riding, division or district, there to continue and remain without bail or mainprize, or to the house of correction for the same county, shire, riding, division, or district, there to continue and remain without bail or mainprize, and to be kept to hard labour for any term not exceeding twelve calendar months, nor less than six calendar months, in either case respectively."

Seamen, &c. riotously assembled, who shall forcibly prevent the loading, &c. of any vessels, &c. to be committed to prison;

† Sect. 2. By 33 Geo. 3. c. 67. s. 2. it is further enacted, "That if any seaman or seamen, keelman or keelmen, caster or casters, ship carpenter or ship carpenters, or other person or "persons, &c. as also any such persons who shall forcibly prevent others from working,

“ persons, shall unlawfully and with force prevent, hinder, or obstruct any seaman or seamen, keelman or keelmen, caster or casters, ship carpenter or ship carpenters, from working at, employing himself in, or exercising his lawful trade, business, or occupation respectively, or shall wilfully and maliciously assault, beat or wound, or use or commit any bodily violence or hurt to or upon any seaman or seamen, keelman or keelmen, caster or casters, ship carpenter or ship carpenters, with intent to deter, prevent, hinder, or obstruct such seaman or seamen, keelman or keelmen, caster or casters, ship carpenter or ship carpenters, from working at, employing himself in, or exercising his lawful trade, business or occupation respectively; every seaman, keelman, caster, ship carpenter, and other person, being lawfully convicted of any of the offences last-mentioned, upon any indictment to be found against him, her, or them, in any court of oyer and terminer, or general or quarter sessions of the peace to be holden respectively in and for the said county, shire, riding, division, or district, wherein the offence was committed, shall be committed, either to the common gaol for the same county, shire, riding, division or district, there to continue and remain, without bail or mainprize, or to the house of correction for the same county, shire, riding, division, or district, there to continue and remain, without bail or mainprize, and to be kept to hard labour, for any term not exceeding twelve calendar months, nor less than six calendar months, in either case respectively.”

Persons offending a second time, to be guilty of felony.

† *Sect. 3.* By 33 Geo. 3. c. 67. s. 3. it is further enacted, “ That if any seaman, keelman, caster, ship carpenter, or other person, shall be convicted of any of the offences aforesaid in pursuance of this act, and shall afterwards offend again in like manner, every such seaman, keelman, caster, ship carpenter, and other person, so offending again in like manner, and being lawfully convicted thereof upon any indictment to be found against him, her, or them, in any court of oyer and terminer, or general or quarter-sessions of the peace respectively, to be holden in and for the county, shire, riding, division, or district, wherein the offence was committed, shall, for such second and every subsequent offence, be adjudged guilty of felony, and shall be transported to some of his majesty’s dominions beyond the seas, for any space of time or term of years not exceeding fourteen years, nor less than seven years.”

#### *Rioters destroying Manufactories.*

By statute of 52 Geo. 3. c. 130. s. 3. it is enacted, “ That if, after the passing of this act, any person or persons, unlawfully, riotously and tumultuously assembled together in disturbance of the public peace, shall unlawfully and with force demolish or pull down, or begin to demolish or pull down, any erection and building, or engine, which shall be used or employed in the carrying on or conducting of any trade or manufactory, or any branch or department of any trade or manufactory of goods, wares, or  
“ merchandize

“merchandize of any kind or description whatsoever, or in which  
 “any goods, wares, or merchandize, shall be warehoused or de-  
 “posited, that then every such demolishing or pulling down, or  
 “beginning to demolish or pull down, shall be adjudged felony  
 “without benefit of clergy, and the offenders therein shall be  
 “adjudged felons, and shall suffer death as in cases of felony  
 “without benefit of clergy.”

### 5. *Threatening Letters.*

† Sect. 1. By 9 Geo. 1. c. 22. it is enacted, “That if any  
 “person or persons shall knowingly send any letter without any  
 “name subscribed thereto, or signed with a fictitious name, de-  
 “manding money, venison, or other valuable thing; or shall  
 “forcibly rescue any person being lawfully in custody of any  
 “officer or other person for the offences aforesaid; or shall by  
 “gift, or promise of money or other reward, procure another to  
 “join him or them in any such unlawful act, such offender shall  
 “suffer death without benefit of clergy.”

Threatening  
 letter.  
 For the form  
 of an indictment  
 for this offence,  
 vide Cro. Cir.  
 Com. 153.

† Sect. 2. And it is enacted by 27 Geo. 2. c. 15. “That if any  
 “person or persons shall knowingly send any letter without any  
 “name subscribed thereto, or signed with a fictitious name or  
 “names, letter or letters, threatening to kill or murder any of his  
 “majesty’s subjects, or to burn their houses, out-houses, barns,  
 “stacks of corn or grain, hay or straw, though no money or veni-  
 “son, or other valuable thing shall be demanded in or by such  
 “letter or letters, or shall forcibly rescue any person in lawful  
 “custody for the same, such offender shall suffer death without  
 “benefit of clergy.”

† Sect. 3. And it is further enacted by 30 Geo. 2. c. 24. “That  
 “all persons who shall knowingly send or deliver any letter or  
 “writing with or without a name or names subscribed thereto,  
 “or signed with a fictitious name or names, letter or letters,  
 “threatening to accuse any person of any crime punishable by  
 “the law with death, transportation, or pillory, or any other in-  
 “famous punishment, with a view or intent to extort or gain  
 “money, goods, wares, or merchandizes, from the person or  
 “persons so threatened to be accused, shall on conviction be put  
 “in the pillory, publicly whipped, or fined and imprisoned, or  
 “transported, not exceeding the space of seven years, in the dis-  
 “cretion of the court.”

By st. 4 Geo. 4. c. 54. reciting the 9 Geo. 1. the 27 Geo. 2. c. 11. and the 30 Geo. 2. c. 24. as to sending threatening letters, so much of the said acts as relates to sending threatening letters is repealed, and enacted, “That from and after  
 “the passing of this last act, if any person shall knowingly  
 “and wilfully send or deliver any letter or writing with or with-  
 “out any name or signature subscribed thereto, or with a ficti-  
 “tious name or signature, demanding money or other valuable  
 “thing, or threatening to kill or murder any of his majesty’s  
 “subjects,

4 Geo. 4. c. 54.  
 Sending a  
 threatening let-  
 ter, demanding  
 money, &c.  
 transportation  
 for seven years,  
 or imprisonment  
 at discretion of  
 the Court.

" subjects, or to burn or destroy his or their houses, out-houses, barns, stacks of corn or grain, hay or straw, or shall knowingly and wilfully send or deliver any such letter or writing threatening to accuse any of his majesty's subjects of any crime punishable by law with death, transportation, pillory, or of any infamous crime, with a view or intent to extort, gain money, security for money, goods or chattels, wares or merchandize, from the person or persons so threatened, or shall procure, counsel, aid, or abet, the commission of the said offences, or of any of them, or shall forcibly rescue any person being lawfully in custody of any officer or other person, for any of the said offences; every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the Court, to be transported beyond the seas for life, or for such term, not less than seven years, as the Court shall adjudge, or to be imprisoned only, or imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding seven years.

Girdwood's  
Case, Old Bai-  
ley, Feb. Sess.  
1776, on a case  
reserved.

† *Sect. 5.* It hath been determined, that if a person deliver a threatening letter to a common porter or message-carrier, desiring him to put it into the post-office, it is evidence for the jury to say whether the person who delivered it to the porter knew its contents, although the letter was sealed at the time it was so delivered.

Girdwood's  
Case, Cases  
C. L. 129.

† *Sect. 6.* It is also determined, that if a threatening letter be delivered to a porter, or at the post-office in one county, directed to a person living in another county, the offender may be tried in the county in which the letter was delivered to the person to whom it was directed.

Girdwood's  
Case, Cases  
C. L. 130.

† *Sect. 7.* So if a letter of this description be couched in ambiguous terms, the question whether the words it contains amount to a threat, may properly be referred to the consideration of the jury.

Rex v. Smith,  
Cowp. 24.

† *Sect. 8.* It is determined that a *certiorari* will not lie to the justices at sessions, to remove an indictment found before them for any of the offences therein described, into the court of king's bench.

Michael Robinson was tried on an indictment framed under the 9 Geo. 1. charging him with having unlawfully and feloniously, &c. sent a certain letter *without any name subscribed thereto*, to James Oldham Oldham, *demanding* of him a *certain valuable thing*, viz. a bank note, against the form of the statute, &c. The facts of the case were, that Oldham the prosecutor had been an apprentice to one Daniel Dolly, with whom he afterwards went into partnership, that upon Dolly's death he had married his widow, and a report had been spread that he and the widow had murdered his former master. The letter which was set out in the indictment and signed R. R. was one of a series of correspondence which he had had with the prisoner and was very guardedly written, requesting £100 to be applied to the wants  
of

of a poor man, for which a certain MS. was to be destroyed, of which he had communicated to the prosecutor a part. The MS. was a poem plainly intimating that the prosecutor and his former mistress had murdered Dolly. Several objections were stated, which were reserved, and Mr. J. Lawrence, who tried the cause, left it to the jury to say whether the prisoner sent the letter set out in the indictment, and whether it contained a threat to publish a libel on the prosecutor, imputing to him the death of Daniel Dolly, unless he would send him a bank note, and if they were of that opinion they were to find him guilty. The jury found him guilty, and also found specially that the prisoner sent the letter in the indictment and that it contained a threat to publish the libel alluded to, with intent to extort money.

Four objections were made to this conviction: 1. That it was not a letter *without a name*. 2. That it did not contain a *threat* or *demand*, so as to bring the case within the 9 Geo. 1. c. 22. 3. That a bank note was not a *valuable thing* within the meaning of that act. 4. Supposing it to fall within the words and meaning of that statute, yet it is the precise offence described by the subsequent statute of 30 Geo. 2., which, making it a misdemeanor only, is a virtual repeal of the former statute on which this prosecution was founded. As to the first point, the judges held that the signature R. R. was no name, as no one by reading those initials could say what the name was. As to the second, they held that the letter did contain a demand, for it was accompanied, as the jury had found, by a threat to publish a libel accusing the prosecutor of murder; and they further held, that it was the demand of a valuable thing. That a bank note was a valuable thing, and whether it might legally be considered so or not at the passing of the act of 9 Geo. 1., yet it was sufficient if it was a valuable thing at the time it was demanded. Although a bank note might not be the subject of larceny at the time of the passing the act of 9 Geo. 1. yet it was a valuable thing to the holder, it might at any time be turned into cash. With regard to the fourth objection, whether this statute of 9 Geo. 1. c. 22. were repealed by the subsequent stat. 30 Geo. 2. c. 24. it was true, that if one act of parliament made a particular case a felony and another act made the *same case* a misdemeanor, the latter is a repeal of the former. But if the two statutes are consistent and can both stand together, the rule does not apply, that the last will be a repeal of the first. Here the stat. of 9 Geo. 1. extends to such cases only in which there is an *actual demand*, and the stat. 30 Geo. 2. c. 24. reaches cases which fall short of a demand, and includes letters sent with a view or intent to extort money, though no demand be made. The consequence was they held the conviction right.

Upon the conference in the above case it was agreed by all the judges, that if the indictment were founded upon the 30 Geo. 2. and a demand proved, there must be an acquittal.

It is to be observed that by the 9 Geo. 1. and 27 Geo. 2. the offence is in sending the letter, but by the 30 Geo. 2. it is in either sending or delivering, therefore in the case of John and Mary

Mary Hammond, who were indicted under the statutes of 9 Geo. 1. and 27 Geo. 2. for feloniously sending a letter to Daniel Dancer, demanding the sum of £10. the indictment consisted of twelve counts, one charging that the prisoners sent and delivered the letter, and another, that they caused it to be sent and delivered. The facts proved were, that the prisoner lived as servant with the prosecutor, that the wife wrote the letter, and that it was delivered by John Hammond, who said he had found it in the garden, but there was no proof that he knew the contents. The court held that the husband could not be convicted as the delivery was not sending the letter. But they left it to the jury to say whether the wife did not send the letter by her husband, he knowing nothing of the contents, if so she might be convicted. The jury acquitted both.

The distinctions between the acts of 9 Geo. 1., 27 Geo. 2., and 30 Geo. 2. are not now material, as the subsequent act of 4 Geo. 4. above set forth, is more comprehensive in its enactments.

#### 6. *Libels.*

In treating of Libels, I shall consider,

See 3 Inst.  
174.  
9 Co. 53. 59.  
Moor, 813.  
627.  
March, 131.  
4 Co. 14.  
Popham, 133.  
139.

1. What shall be said to be a libel.

2. Who are liable to be punished for it.

† 3. In what manner they are to be tried.

4. In what manner they are to be punished.

Selden, tit. Libels. 1 Ventris, 51. Hob. 253. Carth. 405. 1 Salk. 211. Fitzgib. 121. 253.  
2 Wilson, 40. 2 Burr. 180

As to the FIRST POINT, viz. What shall be said to be a Libel.

5 Coke, 125.  
5 Mod. 165,  
166. 167.  
Salk. 418.  
Str. 422. 791.  
12 Mod. 221.  
Ld Ray. 416.  
12 Mod. 2193.  
(a) See Rex v. Topham, 4 Term Rep. 128.

*Sect. 1.* It seemeth, that a libel in a strict sense is taken for a malicious defamation, expressed either in printing or writing, and tending either to blacken the memory of one who is dead, (a) or the reputation of one who is alive, and expose him to public hatred, contempt, or ridicule.

5 Coke, 125.  
Skin. 123, 124.  
Salkeld, 418.  
Ld. Ray. 431.  
3 Keb. 378.

*Sect. 2.* But it is said, that in a larger sense the notion of a libel may be applied to any defamation whatsoever, expressed either by signs or pictures, as by fixing up a gallows against a man's door, or by painting him in a shameful and ignominious manner.

1 Lev. 139.  
5 Coke, 125.  
12 Coke, 35.  
Raymond, 201.  
Stra. 422. 898.  
Savil, 49.  
Salk. 49. 418.  
1 Sid. 270. 271.  
3 Inst. 174.

*Sect. 3.* And since the chief cause for which the law so severely punishes all offences of this nature, is the direct tendency of them to a breach of public peace, by provoking the parties injured, and their friends and families, to acts of revenge, which it would be impossible to restrain by the severest laws, were there no redress from public justice for injuries of this kind, which of all others are most sensibly felt; and since the plain meaning of such scandal as is expressed by signs or pictures, is as obvious to common sense, and as easily understood by every common capacity,

capacity, and altogether as provoking, as that which is expressed by writing or printing, why should it not be equally criminal?

*Sect. 4.* And from the same ground it seemeth clearly to follow, that such scandal as is expressed in a scoffing and ironical manner, makes a writing as properly a libel, as that which is expressed in direct terms; as where a writing, in a taunting manner reckoning up several acts of public charity done by one, says, "You will not play the Jew, nor the hypocrite," and so goes on in a strain of ridicule to insinuate, that what he did was owing to his vain-glory; or where a writing, pretending to recommend to one the characters of several great men for his imitation, instead of taking notice of what they are generally esteemed famous for, pitched on such qualities only which their enemies charged them with the want of; as by proposing such a one to be imitated for his courage, who is known to be a great statesman, but no soldier; and another to be imitated for his learning, who is known to be a great general, but no scholar, &c. which kind of writing is as well understood to mean only to upbraid the parties with the want of those qualities, as if it had directly and expressly done so.

*Sect. 5.* And from the same foundation it hath also been resolved, (a) that a defamatory writing expressing only one or two letters of a name in such a manner that, from what goes before and follows after, it must needs be understood to signify such a particular person, in the plain, obvious, and natural construction of the whole, and would be perfect nonsense if strained to any other meaning, is as properly a libel, as if it had expressed the whole name at large; for it brings the utmost contempt upon the law, to suffer its justice to be eluded by such trifling evasions: and it is as ridiculous absurdity to say, that a writing which is understood (b) by every the meanest capacity, cannot possibly be understood by a judge and jury.

he has read the libel, and understands and believes it to mean the party. Note in 3 Bac.

*Sect. 6.* And from the same ground it further doth appear, that it is far from being a justification of a libel, that the contents thereof are true, (1) or that the person upon whom it is made had

3 Bacon, 495.

a bad

(1) In an action, the truth of a libel may be pleaded in justification, Hob. 253. And even on a motion for an information, the truth or falsehood of the libellous matter will considerably influence the Court either to refuse or to grant it, Str. 498. An affidavit therefore, except in particular cases, is always required from the party applying, stating positively and directly that the contents of the imputed libel are not true. *Rex v. Miles*, Dougl. 271. *Rex v. Buckerton*, 1 Str. 498. *Rex v. Bate*, Dougl. 572. Or the Court will leave the injury to be remedied in the ordinary course of justice by action or indictment, Str. 498. But the Court will not grant this extraordinary remedy by information, nor should a grand jury find an indictment; unless the offence be of such signal enormity that it may reasonably be construed to have

a tendency to disturb the peace and harmony of the community. In such a case the public are justly placed in the character of an offended prosecutor, to vindicate the common right of all, though violated only in the person of an individual; for the malicious publication of even truth itself cannot, in true policy, be suffered to interrupt the tranquillity of any well-ordered society. This is a principle so rational and pure, that it cannot be tainted by the vulgar odium which has accompanied the derivation of the doctrine from the tyranny of the star-chamber; the adoption of it by the worst of courts can never weaken its authority, and, without it, all the comforts of society might with impunity be hourly endangered or destroyed. Vide Law of Libels.

Hobart, 215.  
Popham, 139.  
2 Wilson, 209.  
2 Burrow, 980.  
2 Mod. 119.  
4 Mod. 86.  
4 Read, Stat. Law, 151.  
Barn. 305. 289.  
Sess. Cases, 30.  
Popham, 252.  
Hobart, 215.  
Kehle, 293.  
Moor, 627.  
R. Abr. 37.  
Fitzg. 121.  
2 Str. 898.

(a) *Hurt's Case*, Trin. 12 Annæ.  
3 Mod. 68.  
12 Mod. 139.  
Ld. Ray. 879.  
2 Atkin. 470.  
(b) On application for an information, some friend to the party complaining should by affidavit state, that

5 Coke, 125.  
Hobart, 253.  
Moore, 627.  
Strange, 498.  
9 St. Tr. 275.



a bad reputation; since the greater appearance there is of truth, in any malicious invective, so much the more provoking it is.

5 Coke, 125.  
1 Sid. 219. 271.  
3 Inst. 174.  
Cro. Car. 175.  
504.  
2 Roll. 86.  
3 Mod. 139.

*Sect. 7.* Nor can there be any doubt but that a writing which defames private persons only, is as much a libel as that which defames persons intrusted with a public capacity, inasmuch as it manifestly tends to create ill-blood, and to cause a disturbance of the public peace.

Comb. 65. Carth. 15. Hard. 470. Skin. 123. Keb. 773. St. Tr. 2. 977.

However, it is certain, that it is a very high aggravation of a libel that it tends to scandalize the government, by reflecting on those who are intrusted with the administration of public affairs, which doth not only endanger the public peace, as all other libels do, by stirring up the parties immediately concerned in it to acts of revenge, but also has a direct tendency to breed in the people a dislike of their governors, and incline them to faction and sedition.

(a) Hard. 470.  
1 Lev. 240.  
1 Sid. 414, 415.  
1 Saund. 131.  
2 Kcb. 832.  
(b) 4 Coke, 14.  
(c) Dyer, 285.  
2 Inst. 228.  
Bull. N. P. 6.  
Moor, 627.  
2 Burr. 817.

*Sect. 8.* But it hath been resolved, that no false or scandalous matter contained in (a) a petition to a committee of parliament, or in (b) articles of the peace exhibited to justices of peace, or in any other (c) proceeding in a regular course of justice, will make the complaint amount to a libel; for it would be a great discouragement to suitors to subject them to public prosecutions, in respect of their applications to a court of justice. And the chief intention of the law in prohibiting persons to revenge themselves by libels, or any other private manner, is to restrain them from endeavouring to make themselves their own judges, and to oblige them to refer the decision of their grievances to those whom the law has appointed to determine them.

(d) 2 Keb. 832.  
2 Inst. 228.  
2 And. 28.  
Moor, 143, 705, 820.  
Popham, 152.  
Com. 4 Co. 14.  
4 Com. Dig. 152.  
Dyer, 285.  
Yelv. 117.  
2 Bulst. 269.  
Godbolt, 340.  
Palm, 145.  
180.  
Vent. 23.  
12 Coke, 103.  
2 Mod. 119.  
2 And. 28.

Also (d) it seemeth to have been holden by some, that no want of jurisdiction in the court, to which such a complaint shall be exhibited, will make it a libel, because the mistake of the proper court is not imputable to the party, but to his counsel. Yet if it shall manifestly appear, from the whole circumstances of the case, that a prosecution is entirely false, malicious, and groundless, and commenced, not with a design to go through with it, but only to expose the defendant's character under the shew of a legal proceeding; I cannot see any reason why such a mockery of public justice should not rather aggravate the offence than make it cease to be one, and make such scandal a good ground of an indictment at the suit of the king as it makes the malice of their proceeding a good foundation of an action on the case at the suit of the party, whether the Court had a jurisdiction of the cause or not.

See 1 Danv. Abr. 208, 209, 210, 211. and the foregoing Chapter, tit. "Conspiracy." Moor, 627.

But it is said, that no presentment of a grand jury can be a libel, not only because persons who are supposed to be returned without their own seeking, and are sworn to act impartially, shall be presumed to have proper evidence for what they do, but also because it would be of the utmost ill consequence any way to discourage them from making their inquiries with that freedom and readiness which the public good requires. From which considerations, it seems reasonable to exempt them from the fear of any

any kind of prosecution in respect of their inquiries, as has been shewn more at large in Chapter 27, tit. "Conspiracy."

**Sect. 9.** However, it seems clear, that no writing whatsoever is to be esteemed a libel, unless it reflect upon some particular person. (a)

(a) But see *Rex v. Curl*, 2 Str. 788.

*Rex v. Woolston*, 2 Str. 834. *Reg. v. Bedford*, 2 Str. 789. *Rex v. Watson*, 2 Term Rep. 199. contra.

And it seems, that a writing full of obscene ribaldry, without any kind of reflection upon any one, is not punishable at all by any prosecution at common law, as I have heard it agreed in the court of king's bench; (2) yet it seems, that the author may be bound to his good behaviour, as a scandalous person of evil fame.

Kely. 238.

Salk. 224.

Ld. Ray. 486.

4 Read, S. L.

151.

Fortes. 98.

Sess. Ca. 29.

17 Mod. 139, 218, 220. Ld. Ray. 879. 2 Strange, 934. Bar. K. B. 138. 166. See title "Surety for the good Behaviour," p. 485. 1 Vent. 10. 16.

As to the SECOND POINT, viz. Who are liable to be punished for a libel.

**Sect. 10.** It is certain, that not only he who composes, or procures another to compose it, but also that he who publishes, or procures another to publish it, are in danger of being punished for it.

Almon's Case,

5 Burr. 2666.

9 Co. 59.

Moor, 267. 627.

813.

Strange, 77. B. N. P. 6. Fitzgibbon, 47. Con. 9 Co. 59. Ld. Ray. 414. 417. 729. 4 Com. Dig. 152. b. 2. 5 Co. 125. 12 Co. 35. Comb. 359. 5 Mod. 167, 163. Vide Salk. 417, 418, 419, 646. 281. Cartlew, 405. to 410.

And it is said not to be material whether he who disperses a libel knew any thing of the contents or effect of it or not; for nothing could be more easy than to publish the most virulent papers with the greatest security, if the concealing the purport of them from an illiterate publisher would make him (3) safe in dispersing them.

Moor, 627.

9 Co. 59.

Also it hath been said, that if he who had either read a libel himself, or hath heard it read by another, do afterward maliciously read or repeat any part of it in the presence of others, or lend or shew it to another, he is guilty of an unlawful publication of it.

Moor, 627.

813.

9 Co. 59.

5 Mod. 167.

Also it hath been holden, that the copying of a libel shall be a conclusive evidence of the publication of it, unless the party can prove that he delivered it to a magistrate to examine it, in which case the act subsequent is said to explain the intention precedent.

9 Co. 59.

Moor, 813.

But it seems to be the better opinion, that he who first writes a libel dictated by another, is thereby guilty of making it, and consequently punishable for the bare writing; for it was no libel till it was reduced to writing.

5 Mod. 167.

Salk. 417.

### Sect.

(2) It was so agreed in Read's Case, 11 Mod. 142, but in the case of the King v. Curl, Mich. 1 Geo. 2. for publishing an obscene book, the Court were unanimous, that it is a temporal offence, and that Read's case was not law, Str. 788. 834. Also 4 Burr. 2527.

(3) But if a printer is confined in prison, to

which his servants have no access, and they publish a libel without his privity, the publication of it shall not be imputed to him.—Woodfall's case, Essay on Libels, p. 18. Sed vide Salmon's Case, B. R. Hilary, 1777, and *Rex v. Almon*, 5 Burr. 2687.

(a) 1 Keb. 931.  
2 Keb. 261. 58.  
Ld. Ray. 341.  
417, 486.  
Skin. 123.  
12 Mod. 218.  
11 Mod. 99.  
3 Bac. Ab. 498.  
1 Lev. 139,  
240.

12 Co. 34. Pop. 139. 136. Ray. 201. 1 Sid. 270. 444. 1 Mod. 58. Hob. 62. 215. 3 Inst. 174.  
4 Inst. 180, 181. (b) 5 Mod. 167. 9 Co. 59. 1 Keb. 832. 12 Co. 35. See Fitzg. 47. 12 Vin. Ab. 229.  
Barn. 306. Sess. Cases, 53.

Keb. 832.  
1 Saund. 133.  
1 Lev. 240.  
1 Sid. 414, 415.

*Sect. 11.* Also it hath been resolved, (a) that the sending of a letter full of provoking language to another, without publishing it, is highly punishable; and if the bare making of a libel be an offence, whether it be published or not, as it seemeth to be holden in some (b) books, surely the sending of it to the party reflected upon must be a much greater crime, inasmuch as it so manifestly tends to a disturbance of the peace.

*Sect. 12.* Also it seems to be agreed, that he who delivers a paper full of reflections on any person, in nature of a petition to a committee of parliament, to any other person except the members of parliament, may be punished as the publisher of a libel, in respect of such a dispersing thereof among those who have nothing to do with it.

(c) 9 Co. 59.  
Moor, 813.  
(d) 9 Co. 59.  
Moor, 813.  
(e) Moor, 627.  
1 Vent. 31.  
2 Keb. 502.  
Salk. 418.  
Carth. 409.

*Sect. 13.* But it hath been resolved, that he who barely reads a libel in the presence (c) of another, without knowing it before to be a libel, or who, hearing a libel read by another, (d) laughs at it, or who (e) barely says, that such a libel is made upon such a person, whether he speak it with or without malice, or who is only proved to have had a libel in his custody, shall not in respect of any such act be adjudged the publisher of it. But the having in one's custody a written copy of a libel publicly known, is an evidence of the publication of it.

Moor, 627.  
9 Co. 59.

*Sect. 14.* Also it hath been holden, that he who repeats part of a libel in merriment without malice, and with no purpose of defamation, is no way punishable; but it seemeth, that the reasonableness of this opinion may justly be questioned; for jests of this kind are not to be endured, and the injury to the reputation of the party grieved is no way lessened by the merriment of him who makes so light of it.

15 Vin. Abr. 88  
1 Keb. 832.  
1 Saund. 133.  
1 Lev. 240.  
1 Sid. 414, 415.  
Skin. 124.  
Hard. 470.

*Sect. 15.* But it seemeth to be settled, that the bare printing of a petition to a committee of parliament (which would be a libel against the party complained of, if it were made for any other purpose than as a complaint in a course of justice) and delivering copies thereof to the members of the committee, shall not be looked upon as the publication of a libel, inasmuch as it is justified by the order and course of proceedings in parliament, whereof the king's courts will take judicial notice.

† As to the THIRD POINT, viz. In what manner libels are to be tried. (4)

† *Sect. 16.* It was held, that what is or is not a libel is matter of law upon the face of the record, for the consideration of the court,

(4) Libels, like every other criminal offence, (unless when there is a special provision by statute) are to be tried in the county where the fact was committed. But in the case of the King v. Sir F. Burdett, it was held, that a libel written in Leicestershire, and delivered there (whether open

or sealed) for the purpose of being published in London, was a publication in Leicestershire, so as to warrant a trial in that county. This ruling was dissented from by one judge against the three others, (4 Barn. and Ald. 95.)

court, (a) and that, therefore, on the trial of an indictment for a libel, the only question for the consideration of the jury was the fact of publishing, and the truth of the innuendoes, (b) and that if the paper was not a libel, the defendant after conviction might move the court in arrest of judgment.

(a) 5 Barr. 2666.  
(b) Rex v. Dean of St. Asaph, 3 T. Rep. 428. notes. Rex v. Withers, 3 T. Rep. 428.

† Sect. 17. But by the statute 32 Geo. 3. c. 60. it is recited, that doubts had arisen, whether, on the trial of an “ indictment or “ information for the making or publishing any libel, where an “ issue or issues are joined between the king and the defendant “ or defendants, on the plea of not guilty pleaded, it be competent to the jury impannelled to try the same to give their “ verdict upon the whole matter in issue ; and enacted, That on “ every such trial, the jury sworn to try the issue may give a “ general verdict of guilty or not guilty, upon the whole matter “ put in issue upon such indictment or information ; and shall “ not be required or directed, by the court or judge before “ whom such indictment or information shall be tried, to find the “ defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged “ to be a libel, and of the sense ascribed to the same in such indictment or information.”

† Sect. 18. But by 32 Geo. 3. c. 60. s. 2. it is provided, “ That on every such trial, the court or judge before whom such “ indictment or information shall be tried, shall, according to “ their or his discretion, give their or his opinion and directions “ to the jury on the matter in issue between the king and the “ defendant or defendants, in like manner as in other criminal “ cases.”

† Sect. 19. By 32 Geo. 3. c. 60. s. 3. it is also provided, “ That nothing herein contained shall extend, or be construed to “ extend, to prevent the jury from finding a special verdict, in “ their discretion, as in other criminal cases.”

† Sect. 20. And by 32 Geo. 3. c. 60. s. 4. “ In case the “ jury shall find the defendant or defendants guilty, it shall and “ may be lawful for the said defendant or defendants to move “ in arrest of judgment, on such ground and in such manner as “ by law he or they might have done before the passing of this “ act ; any thing herein contained to the contrary notwithstanding.”

As to the FOURTH POINT, viz. In what manner offenders of this kind are to be punished.

Sect. 21. There seemeth to be no doubt, but that they may be condemned to pay such fine, and also to suffer such corporal punishment, as to the court in their discretion shall seem proper, according to the heinousness of the crime, and the circumstances of the offender.

Cro. Car. 175.  
504.  
3 Inst. 174.  
2 Inst. 228.  
12 Co. 134.  
Stra. 934.  
8 Mod. 178. Fortes. 37. 201.

In cases of seditious and blasphemous libels, by the stat. 60 Geo. 3. c. 8. a greater severity of punishment is inflicted. Upon a conviction of this offence the court may order all the copies of the

the libels in the possession of the defendant to be seized and to be disposed of as they shall think fit; and persons convicted of a second offence may be banished from the United Kingdom for such term of years as the court shall order. And if the party do not depart the kingdom within thirty days after pronouncing the sentence, the king may convey him to such parts out of the kingdom, as, by the advice of his privy council, shall be directed; or if found at large after the end of forty days, may be transported for any term not exceeding fourteen years.

## CHAP. XXIX.

### OFFENCES AGAINST THE PUBLIC TRADE.

1. Slave Trade.
2. Owling.
3. Fraudulent Bankruptcy
4. Fraudulent Insolvency.
5. Seducing Artificers.
6. Exporting Tools and Machinery.
7. Usury.
8. Monopolies.
9. Forestalling—Regrating—Regulating Victuals.

#### 1. *Slave Trade.*

The trading in slaves was first abolished by an act of 47 Geo. 3. st 1. c. 36, by which the trade was declared void and directed to be abolished, and the subjects of this country were prohibited from dealing in slaves under several penalties, and all insurances made on slave vessels were declared void, but none of the offences against that act were rated higher than misdemeanors; for by sect. 15. all offences against that act might be inquired of, and dealt with, as misdemeanors, as if the same had been committed within the body of the county of Middlesex. But the provisions of the statute being found ineffectual to repress the trade, it was enacted

By 51 Geo. 3. c. 23. which recites, "That whereas the two Houses of Parliament did by their resolutions of the 10th and 24th days of June, 1806, severally resolve, that the African Slave, Trade being contrary to the principles of justice, humanity,

" nity, and sound policy, they would, with all practicable expe-  
 " dition, take effectual measures for the abolition of the same :  
 " And that whereas, in conformity with the said resolutions, and  
 " for all and each of the reasons therein stated, the said trade was  
 " by an act passed in the forty-seventh year of his late majesty  
 " declared to be unlawful : And that it hath been found that  
 " divers persons, not deterred by the provisions and penalties of  
 " the said act, do still continue to deal and trade in slaves upon  
 " the coast of Africa and elsewhere, and to carry them for sale  
 " by sea : And that the Commons House of Parliament, by its  
 " resolution of the 15th of June, 1810, did express its indigna-  
 " tion at such practices, and did resolve speedily to take into  
 " consideration such measures as might tend effectually to prevent  
 " such daring violations of the law : And whereas it is fit that  
 " such measures should be extended also to the effectual abolition  
 " of the slave trade wheresoever it may be attempted to practise  
 " it : " and then enacts, " That if any subject or subjects of his ma-  
 " jesty, or if any person or persons residing or being within this  
 " United Kingdom, or in any of the islands, colonies, dominions,  
 " forts, settlements, factories, or territories, now or hereafter be-  
 " longing thereto, or being in his majesty's occupation or posses-  
 " sion, or under the government of the united company of mer-  
 " chants trading to the East Indies, shall, from and after the 1st  
 " day of June next, by him or themselves, or by his or their fac-  
 " tors or agents, or otherwise howsoever, carry away or remove,  
 " or aid or assist in the carrying away or removing, as a slave or  
 " slaves, or for the purpose of being sold, transferred, used, or  
 " dealt with as a slave or slaves, any person or persons whatso-  
 " ever, from any part of Africa, or from any other country, terri-  
 " tory, or place whatsoever, either immediately or by transship-  
 " ment at sea or otherwise, directly or indirectly ; or shall import  
 " or bring, or aid or assist in the importing or bringing into any  
 " island, colony, country, territory, for the purpose aforesaid ; or  
 " shall knowingly and wilfully ship, embark, receive, detain, or  
 " confine on board any ship, vessel, or boat, any such person or  
 " persons as aforesaid, for the purpose of his, her, or their being  
 " so carried away or removed, imported, or brought as aforesaid,  
 " or of being sold, transferred, used, or dealt with as a slave or  
 " slaves ; or shall knowingly and wilfully use or employ, or per-  
 " mit to be used or employed, or let or take to freight or on hire,  
 " any ship or vessel, to be used or employed in carrying away or  
 " removing, importing or bringing, or for the purpose of carrying  
 " away or removing, importing or bringing as aforesaid, any such  
 " person or persons as a slave or slaves, or for the purpose of  
 " his, her, or their being sold, transferred, used or dealt with as  
 " a slave or slaves ; or shall fit out or cause to be fitted out, or  
 " shall take the charge or command of, or navigate, or enter and  
 " embark on board any ship or vessel, as master or captain, mate,  
 " supercargo, or surgeon, knowing that such ship or vessel is  
 " actually employed, or is, in the same voyage for which he or  
 " they shall so enter and embark on board, intended to be em-  
 " ployed in carrying or removing, importing or bringing as afore-  
 " said, any such person or persons as or for the purpose of his,  
 " her,

Carrying away  
 a person as a  
 slave, a felony.

Embarking  
 on board any  
 slave ship as  
 master, mate,  
 &c. a felony.

“ her, or their being sold, transferred, used, or dealt with as a slave or slaves; then, and in every such case, the person or persons so offending, and their counsellors, aiders, and abettors, shall be and are hereby declared to be felons, and shall be transported beyond seas for a term not exceeding fourteen years, or shall be confined and kept to hard labour for a term not exceeding five years, nor less than three years, at the discretion of the court before whom such offender or offenders shall be tried and convicted.”

By sect. 2. every person embarking on board such ship as a petty officer, servant, or seaman, knowing the purpose of the voyage, and any person underwriting a policy of assurance upon the ship, knowing her to be employed in such voyage, are declared guilty of misdemeanors, and are to be punished by imprisonment not exceeding two years.

By 58 Geo. 3. c. 98. offences against the above act may be inquired of, tried, and determined, under and by virtue of any commission to be issued according to the directions of (1) 46 Geo. 3. c. 54.; and that parties convicted under such commission may be subject to the same pains and penalties as if convicted within the realm, according to the provision of 28 Hen. 8.

But as these offences may also be committed on shore, where the provisions of the act of 46 Geo. 3. c. 54. did not apply, as that act related only to the trial of offences committed where the admiral had jurisdiction, it was remedied by 59 Geo. 3. c. 97. by which it is enacted, “That offences, which, by the said recited act of the fifty-first year of his majesty’s reign, are declared to be felonies or misdemeanors, have been or may be committed by British subjects in Africa, either on shore or in rivers, or other places where the admiral has no jurisdiction, and it may be impossible in such cases to bring the offenders to justice under any of the said recited acts, or any other laws now in being, without great inconvenience, expense, and delay;” and then enacts, “That each and every offence, declared by the said act of the fifty-first year of his majesty’s reign to be a felony or misdemeanor, committed, or which shall be committed, by any subject or subjects of his majesty, his heirs or successors, in Africa, or in any of the rivers, ports, or harbours thereof, not being a place where the admiral has jurisdiction, and not being within the local jurisdiction of any ordinary court of a British colony or settlement in Africa, competent to try such offence, may be inquired of, tried, and determined, under and by virtue of any commission already issued, or hereafter to be issued, according to the directions of the said recited act of the forty-sixth year of his majesty’s reign.”

2. *Owling*.

(1) By 46 Geo. 3. c. 54. it is enacted, “That offences committed upon the sea, where the admiral has jurisdiction, may be tried in any of the

plantations, &c. by commissioners appointed under the great seal.

2. *Owling.*

† *Sect. 1.* Owling, so called from its being usually carried on in the night, is the clandestine transportation of wool or sheep out of the kingdom, to the detriment of its staple manufacture.

† *Sect. 2.* By 9 and 10 Will. 3. c. 40. s. 3. it is recited, "That it is a common practice in Romney Marsh and other places adjacent, for evil-disposed persons to sheer their sheep, and lodge wool near the sea-side, and sometimes to bring wool out of the country more remote, and lodge it as aforesaid, where by fraud and force in the night-time, the said persons do cause the same to be transported to France, to the increase of the trade of that kingdom, and the destruction of the trade of England:" and enacted, "That all and every owner or owners of wool shorn or housed, laid up, or lodged, within ten miles of the sea-side, within the counties of Kent and Sussex, shall be obliged to give an exact account in writing, within three days after the sheering thereof, of his, her, or their number of fleeces, and where lodged or housed, to the next adjacent port or officer of his majesty's customs, and the like notice before he, she, or they shall presume to remove any part or parcel thereof, of the said number of fleeces and weight, and the name and abode of the person or persons to whom it is disposed, and the place to which it is intended to be carried; and to take a certificate from the officer who first entered the same, upon the penalty of forfeiting all such wool as shall not be so entered or otherwise disposed of, and the owner or owners also to be liable to the further penalties of three shillings for every pound weight of all such wool, as if the same had been actually transported; which said account the officers respectively are hereby required to take gratis, and to give such certificate or certificates, without delay, to the party or parties demanding the same, and shall therein specify the name or names of the owners and buyers thereof, and limit it to such times and places to be removed; for which duty and service the said officer or officers shall take and demand the sum of sixpence, and no more, for each certificate, upon any account or pretence whatsoever."

Owners of wool within ten miles of the sea side, in Kent or Sussex, to give an account of the number of fleeces, &c.

Penalty.

Officer to give certificate, &c.

† *Sect. 3.* By 9 and 10 Will. 3. c. 40. s. 4. it is recited, "That it is a common practice in the said marsh for divers persons, not resident upon the place, to buy up great quantities of wool, and transport, or cause the same to be transported out of this kingdom:" and enacted, "That no person or persons residing within fifteen miles of the sea, in the counties of Kent and Sussex, shall presume to buy any wool before they do enter into bond to the king's majesty, his heirs, or successors, with sureties, that all the wool they buy shall not be sold by them to any person or persons within fifteen miles of the sea; and in case any wool be found carried towards the sea-side in the counties aforesaid, unless such wool be first entered, and security given, "the

No person shall sell wool within 15 miles of the sea side, in Kent or Sussex, unless entered, &c.



“ the same shall be forfeited, and the person or persons offending therein shall also forfeit three shillings for every pound weight of all such wool.”

Nor remove it from the place where it was first housed.

† *Sect. 4.* By 9 and 10 Will. 3. c. 40. s. 5. it is further enacted, “ That no wool removed from the place where it was first housed, lodged, or laid, after sheering, within ten miles as aforesaid, shall be lodged, after the first removing, within fifteen miles of the sea, in the counties aforesaid, upon pain of forfeiting all such wool, if found; but if carried away, then every person or persons, who were the owner of the said wool, to forfeit for every pound weight the sum of three shillings.”

Wool laid within 15 miles of the sea forfeited, &c.

† *Sect. 5.* By 9 and 10 Will. 3. c. 40. s. 6. it is further enacted, “ That all and every person or persons that shall lay, or cause to be laid or hid, any wool within fifteen miles of the sea, and not entered as aforesaid, all such wool shall be seized and forfeited; and upon any seizure of such wool, every person laying claim to the same shall give sufficient security in his majesty’s court of exchequer (if cast upon trial) to pay treble costs, over and above the penalties and forfeitures aforesaid.”

If live sheep, &c. be conveyed out of Great Britain or Jersey, &c. they and the vessel are forfeited,

† *Sect. 6.* By 28 Geo. 3. c. 38. s. 2. which repeals all former acts upon this subject, except that above cited, it is enacted, “ That if any person or persons whatsoever shall bring, deliver, send, receive, or take, or cause to procure to be brought, delivered, sent, received, or taken into any ship, vessel, or boat, any rams, sheep, or lambs, of any sort or description whatsoever, of the breed of the kingdom of Great Britain, or of the isles of Jersey, Guernsey, Alderney, Sark, or Man, being alive, to be carried and conveyed out of the said kingdom of Great Britain, or any of the said isles, the said rams, sheep, or lambs, and also the ship, vessel, or boat, on board of which the same shall be taken or received, shall become forfeited, and liable to be seized and secured for the benefit of any person or persons seizing the same; and every such person and persons so offending, his, her, and their aiders, abettors, procurers, and comforters, knowing thereof, and who shall be thereof convicted, shall, for every sheep or lamb which shall be brought, delivered, sent, received, or taken, with any such intent as aforesaid, into any ship, vessel, or boat, forfeit the sum of three pounds of lawful money of Great Britain, and shall also suffer solitary imprisonment in the common gaol or house of correction of the county, riding, division, shire, or stewartry, wherein such offender or offenders shall be respectively convicted, for the space of three calendar months, without bail or mainprize, and until such forfeiture shall be paid, so as the whole of such imprisonment for the non-payment of such forfeiture shall not exceed the space of twelve calendar months; and in case of any further conviction for or upon a second or other subsequent offence of the same kind, the person or persons so again offending, shall, upon every second or other subsequent conviction, forfeit and pay for every such sheep or lamb, the sum of five pounds of lawful money of Great Britain, and shall also suffer solitary imprisonment

and the persons assisting therein to pay 5*l.* for each sheep, and suffer three months imprisonment;

and for a subsequent offence, 5*l.* for each sheep, and to suffer six months imprisonment.

ment in the common gaol or house of correction of the county, riding, division, shire, or stewardry wherein such offender or offenders shall be respectively convicted, for the space of six calendar months, without bail or mainprize, and until such forfeitures shall be paid, so as the whole of the imprisonment for the non-payment of the forfeiture incurred by such second or other subsequent offence shall not exceed the space of two years; all of which said several forfeitures shall be for the benefit of the person or persons who shall sue for the same. Provided always, That nothing in this act contained shall in anywise extend to subject any person or persons, or any ship, vessel, or boat, to any of the pains, penalties, or forfeitures herein contained for the carrying or conveying away any wether sheep, or of the wool growing upon any such wether sheep, to be carried alive in any ship, vessel, or boat, out of the kingdom of Great Britain, or out of any of the said isles, for and towards the only necessary food and diet of or for the master or commander, mariners, passengers, or persons therein, and for and towards no other purpose whatsoever."

Forfeitures to be to the persons suing for the same.

Not to extend to live sheep carried for diet of crew.

† Sect. 7. By 28 Geo. 3. c. 38. s. 3. it is provided, " That no live wether sheep shall be put or carried on board any ship, vessel, or boat, for the necessary food or diet of the master or commander, mariners, or passengers therein, until an application shall have been made to the comptroller and collector of the customs of such port or place where the same are intended to be shipped, and a license obtained from them for the shipping thereof; which license shall specify the number of wether sheep so to be put on board such ship or vessel, and they shall in no case exceed such number as in the judgment of the officers granting such license shall be deemed sufficient for the use of such master or commander, mariners or passengers, during the intended voyage of such ship or vessel, according to the distance thereof; nor shall the same be shipped but in the presence of the proper officers appointed to attend the same, upon pain that the sheep so put on board shall become forfeited to the person or persons seizing the same; and the person or persons shipping, or attempting to ship the same, shall, for every such offence, forfeit and pay the sum of twenty shillings for every such sheep to the person or persons who shall inform thereof."

No live wether sheep to be shipped for diet without license from the port officer of the customs.

License to specify the number of sheep, which must be shipped in the presence of the officer, on penalty of forfeiture, and 20s. for each sheep.

† Sect. 8. By 28 Geo. 3. c. 38. s. 4. it is further provided, " That if it shall happen that there shall be no comptroller or collector of the customs at the place where the said live wether sheep are intended to be shipped, that then and in every such case such license shall be obtained from, and the shipping of such live wether sheep shall be made in the presence of, some one or more officer or officers of his majesty's revenue nearest to such place, and every such officer is hereby required to grant such license, and to attend to and overlook the shipping of such sheep ;

Where there is no officer, the license to be granted by the officers at the nearest place, &c.

"sheep; any thing herein contained to the contrary thereof in  
"anywise notwithstanding."

Not to extend  
to vessels  
bound to or  
from any place  
between the  
Mull of Cantire  
and Cape  
Wrath ;

† *Sect. 9.* By 28 Geo. 3. c. 38. s. 5. it is recited, "That there are within some parts of that part of Great Britain called Scotland, very few officers of his majesty's revenue:" and enacted, "That nothing in this act contained with respect to any officer  
"being present at the shipping of live wether sheep or granting of  
"license for that purpose, shall extend or be construed to extend  
"to the shipping of live wether sheep on board any ship, vessel,  
"or boat, which shall be bound only to or from any port or place  
"between the Mull of Cantire and Cape Wrath, for the necessary  
"food and diet of or for the master or commander, mariners,  
"passengers, or persons on board such ships, vessels, or boats,  
"and for and towards no other purpose whatsoever."

nor to the  
moving sheep  
from the main-  
land to islands  
within the firths  
of Scotland,  
where estates  
consist of both.

† *Sect. 10.* By 28 Geo. 3. c. 38. s. 6. it is recited, "That in that part of Great Britain called Scotland, estates and farms often consist of mainland and small islands within the different firths or seas adjacent, on which islands sheep are fed and depastured, and which, for that and other purposes, must necessarily be removed on board boats or other vessels from one island to another island, or to the mainland, or therefrom to the said islands:" and enacted, "That this act, or any thing herein con-  
"tained, shall not extend to prevent or hinder any landholder,  
"proprietor, or tenant of such estate or estates, or farm or farms,  
"from moving, transporting, carrying, and exchanging from the  
"mainland to any island or islands in the firths or seas adjacent,  
"or from any such island to another such island, or from thence  
"to the mainland, on board boats or other vessels, any live sheep  
"or lambs, as occasion may be or require."

Proprietors, &c.  
of such estates  
to give bond not  
to export sheep  
to foreign parts,  
and to obtain a  
license for so  
moving them.

† *Sect. 11.* By 28 Geo. 3. c. 38. s. 7. it is provided, "That it  
"shall not be lawful to or for any such landholder, proprietor, or  
"tenant of such aforesaid estate or estates, farm or farms, to  
"remove, transport, carry, or exchange, any such live sheep or  
"lambs as aforesaid, until he, she, or they shall have entered into  
"a bond, to the use of the king's majesty, his heirs, and succeſ-  
"sors, in the penalty of one hundred pounds, that such land-  
"holder, proprietor, or tenant will not export, or knowingly per-  
"mit to be exported, to foreign parts, any live sheep, lambs,  
"wool, woolfels, mortlings, or shortlings, to him, her, or them  
"belonging, contrary to the true intent and meaning hereof; and  
"shall have delivered such bond to one of his majesty's justices  
"of the peace, officer of the customs, or officer of excise, nearest  
"to the residence of such landholder, proprietor, or tenant; and  
"also until he, she, or they shall have obtained a license for the  
"moving, transporting, carrying, or exchanging any such live  
"sheep or lambs as aforesaid, from such aforesaid justices of the  
"peace, or officer, under his hand and seal; and which such afore-  
"said justice and officer are hereby required to grant upon re-  
"ceiving such bond, or at any time thereafter."

† *Sect.*

† *Sect. 12.* By 28 Geo. 3. c. 38. s. 8. it is further enacted,  
 “ That every such license shall express and contain the name and  
 “ residence of the person and persons to whom the same shall  
 “ be granted, and the names and situations of the islands to and  
 “ from which any such live sheep or lambs shall and may be  
 “ thereby moved, transported, carried, or exchanged; and every  
 “ such license shall continue in force until a forfeiture shall be  
 “ made of the last aforesaid bond; which said bond, and a copy  
 “ of every such license, shall be sent by the justice or officer who  
 “ shall take or grant the same, within one month next after re-  
 “ ceiving of such bond or granting such license respectively, to  
 “ the commissioners of his majesty’s customs in Edinburgh.”

License to con-  
tain the name of  
the person to  
whom granted,  
&c. and to con-  
tinue in force  
till the bond be  
forfeited.  
Bond and copy  
of license to be  
sent to the com-  
missioners of  
the customs, in  
Edinburgh.

† *Sect. 13.* By 28 Geo. 3. c. 38. s. 9. it is further enacted,  
 “ That all and every person and persons who shall directly or in-  
 “ directly carry, export, transport, or otherwise convey, or cause  
 “ or procure to be carried, exported, transported, or otherwise  
 “ conveyed, out of the kingdom of Great Britain, or out of or  
 “ from the said isles of Jersey, Guernsey, Alderney, and Man,  
 “ or out of or from any of them, into any parts or places out of the  
 “ kingdom or isles aforesaid, any wool whatsoever of the growth  
 “ of the kingdom, or of the isles aforesaid, or any woollens, mort-  
 “ lings, shortlings, yarn or worsted made of wool, woollstocks, cruels,  
 “ coverlids, waddings, or other manufactures, or pretended manu-  
 “ factures, made of wool slightly wrought up, or otherwise put  
 “ together, so as the same may be reduced to and made use of  
 “ as wool again, or mattresses or beds stuffed with combed wool,  
 “ or wool fit for combing or carding, or any fuller’s earth, fulling  
 “ clay, or tobacco-pipe clay, and also all and every owner and  
 “ owners of any ship or other vessel, and all and every owner  
 “ and owners of every horse or other beast of burthen, waggon,  
 “ cart, or carriage, upon which any sheep, wool, or other articles  
 “ before enumerated, and hereby prohibited from exportation,  
 “ shall be exported, transported, carried or conveyed, packed or  
 “ loaded, with an intent to be exported, knowing thereof, and  
 “ being actually aiding, assisting, or consenting thereunto, and  
 “ also every master and commander, and mariner of or in such  
 “ ship or other vessel wherein any such wool or other articles  
 “ aforesaid, and which are hereby prohibited from being ex-  
 “ ported, shall be so exported, transported, carried or conveyed,  
 “ or laden or laid on board as aforesaid, with any such intent or  
 “ purpose as aforesaid, knowing thereof, and being actually aid-  
 “ ing, assisting, or consenting thereunto, and also every factor or  
 “ servant, or other person whatsoever, and every collector, cus-  
 “ tomer, comptroller, waiter, searcher, surveyor, or other officer  
 “ or officers whomsoever, knowing thereof, and being actually  
 “ aiding, assisting, or consenting thereunto, and who shall be  
 “ thereof convicted, shall forfeit and pay for the first offence  
 “ three shillings for every pound weight of such wool or other  
 “ the aforesaid enumerated articles, which are hereby prohibited  
 “ from being exported, or the sum of fifty pounds of lawful  
 “ money of Great Britain in the whole, at the election of the  
 “ person or persons who shall sue for the same, and shall also  
 “ suffer solitary imprisonment in the common gaol or house of  
 “ correction

Persons convey-  
ing wool, &c.  
out of Great  
Britain or Jer-  
sey, &c.  
Owners, &c.  
of ships, carts,  
horses, &c. or  
revenue officers,  
exporting, or  
assisting in the  
exportation of  
sheep, wool, &c.  
liable to penal-  
ties.

Penalties.

Forfeitures to go to the persons suing for them.  
Wool, &c. conveyed contrary to this act, with the vessel, &c. to be forfeited.

Act not to extend to the exportation of tobacco-pipe clay to the British colonies in the West Indies, while allowed by 17 Geo. 3. c. 43.

" correction of the county, riding, division, shire, or stewardry  
" wherein such offender or offenders shall be respectively con-  
" victed, for the space of three calendar months, without bail or  
" mainprize, and until the penalty in which he, she, or they shall  
" be convicted shall be paid, so as the whole of such imprison-  
" ment for the non-payment of such penalty shall not exceed the  
" space of twelve calendar months; and in case of a further con-  
" viction for or upon a second or other subsequent offence of the  
" same kind, the person or persons so again offending shall, upon  
" every second, or other subsequent conviction, forfeit and pay  
" three shillings for every pound weight of such wool and other  
" articles herein-before mentioned, and which are hereby pro-  
" hibited from being exported, or the sum of fifty pounds of law-  
" ful money of Great Britain, at the election of the person or  
" persons who shall sue for the same, and shall also suffer solitary  
" imprisonment in the common gaol or house of correction of  
" the county, riding, division, shire, or stewardry, wherein such  
" offender or offenders shall be respectively convicted, for the  
" space of six calendar months, without bail or mainprize, and  
" until the penalty in which he, she, or they shall be convicted  
" shall be paid, so as the whole of such imprisonment for the  
" non-payment of the penalty which shall be incurred by such  
" second or other subsequent offence shall not exceed the space  
" of two years; all which said several forfeitures shall be for the  
" benefit of the person or persons who shall sue for the same;  
" and the said wool, and other the said herein-before enumerated  
" articles, which shall be packed, loaded, removed, carried, con-  
" veyed, or shipped, with intent to export the same, otherwise  
" than under and according to the restrictions and regulations,  
" and subject to the powers and exceptions herein-after mentioned  
" and expressed, shall, together with the ship, vessel, bottom, or  
" boat, waggon, cart, and other carriage, horses, or other beasts,  
" on or by which any of the said hereby prohibited articles shall  
" happen to be so loaded, carrying or conveying, be liable to be  
" seized, and shall become forfeited for the benefit of the person  
" or persons who shall seize the same."

† *Sect. 14.* By 28 Geo. 3. c. 38. s. 10. it is provided, " That  
" nothing in this act contained shall extend, or be deemed or  
" construed to extend, to prohibit the exportation of tobacco-  
" pipe clay from any port in this kingdom to any British sugar  
" colony or plantation in the West Indies, in any ship or vessel  
" which may lawfully trade thither, so long as the exportation  
" thereof shall be allowed by virtue of an act made and passed in  
" the seventeenth year of the reign of his present majesty, intituled,  
" An Act for repealing the eleventh rule in the book of rates,  
" so far as the same relates to making any allowance upon the  
" importation of damaged currants and raisins, and for making  
" the importer of such goods an abatement in the duties in lieu  
" thereof; and for explaining the said rule with respect to such  
" allowance for damage on other goods; and to permit the ex-  
" portation of tobacco-pipe clay from this kingdom to the British  
" sugar colonies or plantations in the West Indies, for a limited  
" time ;

“time;” which said recited act has been continued by several  
“subsequent acts of parliament.”

† Sect. 15. By 28 Geo. 3. c. 38. s. 11. it is enacted, “That  
“all and every owner and owners of wool, or any other the said  
“herein-before enumerated woollen and worsted articles, and  
“which are hereby prohibited from being exported, or his, her,  
“or their agent or agents, who shall at any time hereafter carry,  
“or cause to be carried, any wool, or any other the said last-  
“mentioned articles, to any port or place on the sea-coast within  
“the said kingdom of Great Britain, with an intention to convey  
“the same to any other port or place on the sea-coast within  
“the same kingdom, from whence the same may be shipped off,  
“or otherwise transported, conveyed, or carried into foreign  
“parts, shall, in the first place, cause a due entry to be made of  
“the said wool, and other the said last-mentioned articles, at the  
“port from whence the same shall be so intended to be conveyed,  
“containing the exact weight, marks, and numbers of the same,  
“before he, she, or they, shall presume to load or carry away any  
“of the said wool, or the last-mentioned articles, within five  
“miles of any such port or place on the said sea-coasts, from  
“whence the same is or are so to be conveyed; and if any wool,  
“or any other the said last-mentioned articles, shall be carrying  
“towards the sea, for the purpose aforesaid, without being first  
“entered in manner aforesaid, and without being accompanied  
“with a certificate of such entry, and which the officer with  
“whom such entry shall be made is hereby required to give, the  
“wool, and other the aforesaid articles, so found, and also the  
“horse or horses, or other beast, cart, waggon, or other carriages,  
“conveying the same, shall be forfeited for the benefit of the  
“person or persons who shall seize thereupon.”

If wool, &c.  
intended to be  
sent coastwise,  
be carrying  
towards the sea,  
without entry  
thereof having  
been made, to  
be forfeited, &c.  
Repealed by 1  
& 2 Geo. 4.  
c. 81. Vide the  
next paragraph.

By 1 and 2 Geo. 4. c. 81. The above clause is recited and  
so much of the act of 28 Geo. 3. as relates to the registry of  
wool carried coast wise is repealed.

† Sect. 16. By 28 Geo. 3. c. 38. s. 12. it is provided, “That  
“the aforesaid clause is not intended, nor shall be construed to  
“extend, to the hindering any person or persons from carrying  
“his, her, or their wool from the place of shearing the same, on  
“horses, or by carts and waggons, to his, her, or their own dwell-  
“ing-house or houses, or out-houses thereunto belonging, though  
“the same be within five miles or less of the sea, so as such person  
“or persons, within ten days after the shearing of the said wool, and  
“before he, she, or they remove or otherwise dispose of the same, or  
“any part thereof, from the place where it was first carried after  
“shearing, do under his, her, or their hands, certify to the officers  
“of the customs in the next adjacent port, the true quantity of the  
“said wool; (that is to say) of the number of fleeces, and where the  
“same is housed, and that such person or persons do not re-  
“move, or otherwise dispose of the said wool, to any other place,  
“without first certifying to the officer of such port, under his,  
“her, or their hands, of his, her, or their intention to remove the  
“same, three days at least before such removal; and the officer  
“and

But not to ex-  
tend to wool  
carrying from  
the place of  
shearing to  
the owner's  
house, though  
within five miles  
of the sea, if  
the quantity be  
certified to the  
officer of the  
next port, as  
also the inten-  
tion to remove  
it.

Officer to register such certificates.

"and officers in their respective ports, and the limits of such ports, are hereby required to receive and keep such certificates, and to make a register of them; but in case any such person or persons shall neglect to make and send such certificate to the officer or officers of the next adjacent port as aforesaid, or shall remove or otherwise dispose of any of the said wool before such certificate of his, her, or their intention so to be made and delivered as aforesaid, such person or persons shall have no benefit by this proviso, but be liable to the penalties expressed in the foregoing clause."

If there be no port within five miles, certificates to be given to a justice, &c.

† *Sect. 17.* By 28 Geo. 3. c. 38. s. 13. it is also provided, "That if such next adjacent port shall happen to be at a greater distance than five miles from the dwelling-house or houses of such aforesaid person or persons, that then and in every such case every such aforesaid entry, notice, or certificate, shall and may be made or given to any one of his majesty's justices of the peace, or any officer of his majesty's revenue, nearest to the dwelling-house or houses of such person or persons; any thing herein contained to the contrary thereof in anywise notwithstanding."

Quantity of wool of sheep shorn for market between March 1st and July 1st need not be certified till after the general shearing, if three days previous notice of the removal be certified as aforesaid.

† *Sect. 18.* By the 28 Geo. 3. c. 38. s. 14. it is further provided, "That in case any sheep shall be shorn between the first day of March and the first day of July in each year, for the sole purpose of sending them to market, and in case the owner or owners of such sheep shall not remove or otherwise dispose of the wool or fleeces which shall be shorn from such sheep, from the places where the same were first carried after shearing, without first certifying in three days in manner aforesaid, it shall not be necessary for such owner or owners to certify the true quantity of the said wool and number of such fleeces, and where the same are housed, until such owner or owners shall certify in manner before-mentioned, the quantity of the wool and number of the fleeces shorn from the whole of the flock or flocks belonging to such owner or owners, after the general shearing for that season of the said flock or flocks."

Qualified persons may seize, for their own use, wool, &c. found near the sea, or any navigable river, with an intent to be exported.

† *Sect. 19.* By 28 Geo. 3. c. 38. s. 15. it is enacted, "That it shall and may be lawful to and for any person or persons, authorized and qualified as herein-after is mentioned, to seize, take, and challenge, to and for his and their own use and benefit, all such wool, woolfells, mortlings, shortlings, and other the said woollen and worsted articles fuller's earth, fulling clay, and tobacco-pipe clay, which he or they shall happen to see, know, or discover, to be brought, carried, or laid on shore at or near the sea, or any navigable river, to the intent or purpose to be exported or conveyed out of the said kingdom of Great Britain, or out of the isles aforesaid, or any of them, contrary to the true intent and meaning of this act; and the offender or offenders therein shall be subject and liable to the like forfeiture, pains, and penalties, as persons by this act are subject unto, for exporting, transporting, or shipping of wool, or other the commodities aforesaid, contrary to the true intent and meaning hereof."

Penalty on the offenders.

† Sect. 20. By 28 Geo. 3. c. 38. s. 16. it is provided, "That it shall and may be lawful to export and transport the several quantities of wool herein-after mentioned out of or from the port of Southampton only, unto the isles of Jersey, Guernsey, Alderney, or Sark, by or for the only use or behoof of any of the inhabitants of the said isles, or some or one of them, but under and subject to the regulations in this act contained respecting the removal and shipping of wool, and so as such wool shall be shipped or laden on board some ship or vessel then the property of some person or persons residing within one of the said isles of Jersey, Guernsey, Alderney, or Sark, and so as such person and persons as shall so ship or put on board such wool aforesaid in any such ship or other vessel, do, before the shipping or putting on board such wool, deliver unto the collector, customer, comptroller, surveyor, or searcher of the port of Southampton aforesaid (out of which the same wool is to be exported), a writing under the hand and seal of the governor of the said isle of Jersey, or of his deputy or deputies, as to the wool which is to be exported to the said island; and under the seal of the said governor of Guernsey, or of his deputy or deputies, as to the wool which is to be exported to the said isles of Guernsey, Alderney, and Sark, or any of them; in which writing it shall be expressed that the party named therein is authorized and appointed to export or cause to be exported out of the port aforesaid so much wool, expressing the number of tods, to the same isles, or some or one of them, to be used and manufactured in one of the same isles, or in some of the members or parts of the same, and that such party, so authorized and appointed to export or cause to be exported such wool, hath, before the making and sealing of the said writing, entered into sufficient bond to his majesty's use for the landing of the said wool in manner aforesaid."

Wool for the use of Jersey, &c. may be exported from Southampton under the regulations herein contained.

† Sect. 21. By 28 Geo. 3. c. 38. s. 17. to the intent that the quantity of wool to be exported out of the port of Southampton aforesaid into the said isles, or either of them, in any one year, may not exceed the quantity hereunder specified; (that is to say) unto the isle of Jersey four thousand tods, and no more, of uncombed wool; and unto the isle of Guernsey two thousand tods, and no more, of uncombed wool; and unto the isle of Alderney four hundred tods of uncombed wool, and no more; and unto the isle of Sark two hundred tods of uncombed wool, and no more, each tod not exceeding thirty-two pounds in weight; it is further enacted, "That the governor of the said isle of Jersey, or his deputy, for whom he shall answer, shall not make to any person or persons any writing or writings, such as is above specified, to authorize and appoint such person or persons as aforesaid to fetch, export, or transport, out of the port of Southampton aforesaid unto the said isle of Jersey, in any one year, any greater quantity of wool than four thousand tods; and that the governor of the said isle of Guernsey, or his deputy, for whom he shall answer, shall not make to any person

Quantity that may be exported annually to Jersey, &c.

Governor of Jersey, &c. not to authorize the exportation of more than the quantity specified.

"or



Customer of Southampton to be displaced, and forfeit 500*l.* if he permit a larger than the allowed quantity to be laden.

Governors, &c. authorizing a larger quantity to be exported, to forfeit 20*l.* per tod.

1*s.* to be paid for license and entry.

No wool, &c. to be shipped, but in vessels belonging to natural-born subjects resident in Great Britain.

" or persons any writing or writings, such as is above specified,  
 " to authorize and appoint such person or persons as aforesaid,  
 " to fetch, export, or transport, out of the port above specified,  
 " unto the said isles of Guernsey, Alderney, and Sark, in any  
 " one year, any greater quantity of wool than two thousand tods  
 " for Guernsey, four hundred tods for Alderney, and two hun-  
 " dred tods for Sark; and that the customer of the port of  
 " Southampton aforesaid shall keep a true account of all the said  
 " quantity of wool so by him permitted to be laden by this act,  
 " and shall not permit any greater quantity of wool to be laden  
 " than by this act is prescribed, in any one year, to any of the  
 " said islands respectively, under any pretence whatsoever, upon  
 " the penalty of the forfeiture of his place, and of the sum of  
 " five hundred pounds in money, one moiety whereof to the  
 " king's majesty, his heirs or successors, and the other moiety to  
 " him or them that will sue for the same in any court of record,  
 " wherein no essoin, protection, or wager of law, nor more than  
 " one imparlance, shall be allowed: and if any of the governors  
 " of the said isles, their or either of their deputy or deputies, shall  
 " give, grant, or make any license or licenses for exporting from  
 " Southampton aforesaid unto the said isles respectively any  
 " greater quantity of such wool than is before, by the true meaning  
 " of this act, limited and appointed in that behalf; that then  
 " the respective governor or governors of such of the said isles  
 " shall forfeit and pay to the king's majesty, his heirs or suc-  
 " cessors, the sum of twenty pounds of lawful money of Great  
 " Britain for every tod of wool, which shall be so licensed to be  
 " exported, over and above the rate or proportion of wool in and  
 " by this act, or the true meaning thereof, limited or appointed,  
 " one moiety whereof shall be paid to the king's majesty, his  
 " heirs or successors, and the other moiety thereof to him or  
 " them that will sue for the same in any court of record, whereof  
 " no essoin, protection, or wager of law, nor more than one im-  
 " parlance shall be allowed."

† *Sect. 22.* By 28 Geo. 3. c. 38. s. 18. it is enacted, " That  
 " the respective governors aforesaid, or their respective deputies,  
 " or any of their clerks, officers, or servants, for the granting,  
 " making, signing, or sealing of every such writing of license be-  
 " fore directed, and for the entering a remembrance of the same  
 " into some book, which they shall have and keep for that pur-  
 " pose, shall have and take the sum of one shilling, and no more."

† *Sect. 23.* By 28 Geo. 3. c. 38. s. 19. it is enacted, " That  
 " no wool, or any of the herein-before enumerated woollen or  
 " worsted articles, fullers' earth, fulling clay, or tobacco-pipe  
 " clay, shall, on any pretence whatever, be put on board any ship  
 " or other vessel, hulk, or boat, whereof any alien-born, or  
 " whereof any natural-born subject, not inhabiting within the  
 " kingdom of Great Britain, shall be owner or part owner; and  
 " every such ship or vessel, hulk, or boat, wherein any such  
 " wool, or other articles herein-before enumerated, shall be  
 " shipped, put, or lain on board, contrary to the true intent and  
 " meaning of this act, shall be forfeited to and for the use of the  
 " person

“ person and persons seizing the same; provided always, that this act shall not extend to any lamb skins ready dressed and prepared, fit and useful for fur or linings.”

Not to extend to lamb skins dressed for fur or linings.

† Sect. 24. By 28 Geo. 3. c. 38. s. 20. it is enacted; “ That it shall and may be lawful for any buyer or manufacturer of wool within the said counties of Kent and Sussex, residing within fifteen miles of the sea, having given such bond, with sureties, as is before-mentioned, to sell any wool to any buyer or manufacturer of wool within the said counties, who has also given such bond with sureties, as is aforesaid, and to remove and lodge the same at the warehouse or other place belonging to the person or persons to whom the same shall be sold, and who has entered into such bond, with sureties, as is aforesaid, as often as shall be thought necessary, although the person or persons purchasing the same shall live within fifteen miles of the sea, such wool being removed, and such person or persons giving such notice of the lodging and housing thereof, as is required by the said act of the ninth and tenth years of the reign of his late majesty king William the Third.”

Wool may be sold, &c. within 15 miles of the sea in Kent and Sussex, where the parties have given the bond required, &c.

† Sect. 25. By 28 Geo. 3. c. 38. s. 21. it is provided, “ That nothing in the said recited act contained shall extend, or be construed to extend, to prevent or hinder any wool shorn, or housed, laid up or lodged within ten miles of the sea-side, within the counties of Kent and Sussex, or either of them, from being removed or carried to any town, field, or place, where a regular and established fair shall be held for the sale of wool; and in case the same shall not be sold or disposed of at such fair, to bring back such wool to the house or place from whence the same had been taken; provided that, previous to the removal of such wool, a permit be taken out containing the quantity of the wool to be removed, and to continue in force for and during such time as may be necessary for the removal of the same to the fair as aforesaid, and the returning thereof to the house or place from whence the same had been taken, in case the same shall not be sold or disposed of at such fair, and the proper officers are hereby required to grant all such permits upon application to them made for that purpose from the grower of the wool.”

Wool shorn or housed within ten miles of the sea in Kent and Sussex may be carried to fairs for sale, &c. on permit.

† Sect. 26. By 28 Geo. 3. c. 38. s. 22. it is enacted, “ That every permit shall accompany the wool for the removal of which the same shall have been granted, and shall, in case of such wool being sold or disposed of at the fair whereto the same shall be carried, be produced by the purchaser or purchasers thereof to the proper officer or officers, who shall then grant to such purchaser or purchasers another permit, or other permits, for the taking such wool from such fair, and which permit or permits shall specify the quantity of wool to be moved, and the time during which it shall be to continue in force.”

Permits for wool so sold to be produced to the officer, &c.

† Sect. 27. By 28 Geo. 3. c. 38. s. 23. it is enacted, “ That in case of the return of any such wool unsold to the house or place from whence the same shall have been taken, the same shall become subject and liable to the same rules, restrictions, and

Wool returned unsold from fairs to be subject to the same rules as before removal.

“and laws, as it would have been, in case the same had never  
“been moved, or taken to any fair as aforesaid.”

Persons coun-  
terfeiting certi-  
ficates, &c. to  
forfeit £20.

† Sect. 28. By 28 Geo. 3. c. 38. s. 24. it is enacted, “That  
“if any person or persons whosoever shall counterfeit, erase, or  
“in anywise alter any certificate or acknowledgment in the said  
“recited act mentioned, or any license, certificate, or instrument  
“hereby directed to be made or given, or shall cause or procure  
“the same, or either of them, to be counterfeited, forged, erased,  
“or altered in any respect, or shall knowingly make use of any  
“counterfeited or altered license, certificate, or acknowledgment,  
“he, she, or they so offending shall forfeit and pay the sum of  
“twenty pounds for every such offence to any person or persons  
“who shall sue for the same.”

Wool, &c.  
removing be-  
tween sun-set-  
ting and sun-  
rising, within  
five miles of the  
sea, to be for-  
feited, &c.

† Sect. 29. By 28 Geo. 3. c. 38. s. 25. it is further enacted,  
“That no wool, or any other the aforesaid woollen or worsted  
“articles, and which are hereby prohibited from being exported,  
“shall be removed or carried towards the sea, within five miles  
“of the sea-coast of any part of the kingdom of Great Britain,  
“upon any pretence whatever, between sun-setting and sun-  
“rising, upon pain of the same being forfeited, together with  
“the horses, waggon, cart, or carriage, in and by which such  
“wool, and other the said woollen and worsted articles, shall be  
“so conveying, for the benefit of the person or persons seizing  
“the same; and the driver or drivers of every such waggon, cart,  
“or carriage, knowing thereof, and being thereof convicted, shall  
“be committed to the house of correction, for the space of one  
“month, there to remain without bail or mainprize.”

but not to ex-  
tend to wool  
shorn, and car-  
ried after sun-  
setting, the same  
day, to the own-  
er's houses.

† Sect. 30. By 28 Geo. 3. c. 38. s. 26. it is provided, “That  
“nothing in the last aforesaid clause contained shall extend, or  
“be construed to extend, to prevent or hinder any farmer or  
“grower of wool from removing or carrying, at any time after  
“sun-setting, such wool as shall have been shorn that day, from  
“the place or places of shearing the same to the dwelling-house  
“or store-house of such farmer or grower, although such removal  
“shall be towards the sea, and within five miles of the coast  
“thereof.”

Worsted yarn,  
not exceeding  
14lb., prepared  
for knitting,  
may be carried  
to retail shop,  
&c.

† Sect. 31. By 28 Geo. 3. c. 38. s. 27. it is also provided,  
“That nothing herein contained shall prevent or hinder any per-  
“son or persons from carrying and conveying, at any time, any  
“parcels of woollen or worsted yarn twisted, of two or more  
“threads, and manufactured and prepared for knitting, so as  
“each parcel be *bonâ fide* directed to, and carrying for and to  
“the residence or shop of some retailer or retailers of such  
“woollen or worsted yarn, and so as there be not more than  
“fourteen pounds weight, directed to and carrying for any one  
“person at the same time, and so as such parcel be marked ac-  
“cording to the directions of the act or acts of parliament  
“requiring the marking thereof.”

How wool, &c.  
is to be packed.

† Sect. 32. By 28 Geo. 3. c. 38. s. 28. it is further enacted,  
“That no wool, woolfels, mortlings, shortlings, wool-flocks,  
“worsted bay, or woollen yarn, shall be packed up in any other  
“package

“ package otherwise than packs or trusses of leather or canvass,  
 “ commonly called pack cloths, or in linen or woollen; and all  
 “ such packs or trusses of leather, canvass, linen, or woollen,  
 “ shall be stamped or marked on the outside thereof with the  
 “ word ‘ wool,’ in large characters, not less than three inches in  
 “ length, on forfeiture of all such wool, or other the aforesaid Penalty for neglect.  
 “ articles, to the person or persons seizing the same, and also  
 “ upon forfeiture, by the person or persons to whom such wool  
 “ or other aforesaid articles shall belong, of any sum or sums of  
 “ money not exceeding one shilling for every pound weight of  
 “ such wool, or other the aforesaid articles so seized, to the per-  
 “ son or persons seizing the same, as the court or justices before  
 “ whom such wool, or other the aforesaid articles, shall be con-  
 “ demned, shall direct: provided always, that nothing herein Worsted yarn may be packed in paper, if marked, &c.  
 “ contained shall extend to prevent any person from packing or  
 “ putting any worsted or woollen yarn in paper, so that such  
 “ paper is fairly directed to the person or persons to whom the  
 “ same is intended to be sent, and the word ‘ worsted’ or ‘ yarn,’  
 “ as the case may be, wrote or marked thereon, in letters not  
 “ less than one inch in length, and that the quantity in any one  
 “ such paper contained do not exceed fourteen pounds in weight.”

† Sect. 33. By 28 Geo. 3. c. 38. s. 29. it is provided, “ That Justices may order wool, &c. unstamped on the package, to be returned, but not to mitigate the penalty below 6d. per lb. weight.  
 “ the justices before whom any complaint or information respect-  
 “ ing the word ‘ wool’ not being stamped or marked on the out-  
 “ side of the package of such last enumerated articles, according  
 “ to the directions of this act, shall be made, shall and may, and  
 “ they are hereby empowered, if they shall so think fit, to order  
 “ and direct the wool, and other the said herein-before enume-  
 “ rated articles which shall have been seized, to be returned to  
 “ and delivered up to the owner or owners thereof; but that in  
 “ every such case the forfeiture or penalty incurred by such of-  
 “ fence shall not be mitigated or reduced below sixpence for  
 “ every pound weight of such wool, or articles so seized.”

† Sect. 34. By 28 Geo. 3. c. 38. s. 30. it is further enacted, Wool, &c. not packed according to this act to be forfeited, and 3s. for every lb. weight.  
 “ That all and every person and persons who shall pack any  
 “ wool, or other the aforesaid woollen or worsted articles, in any  
 “ box, barrel, cask, case, chest, or any other package, otherwise  
 “ than according to the directions herein-before contained, or  
 “ who shall press together, or cause or procure to be pressed  
 “ together, with any screws, presses, or other engine, any wool  
 “ whatsoever, or any yarn made of wool, or other the woollen or  
 “ worsted articles by this act prohibited from being exported,  
 “ into any pack, truss, or other wrapper, or put, press, pack, or  
 “ stean the same, or cause to be put, pressed, packed, or steaned,  
 “ into any butt, pipe, hogshead, chest, or other cask or vessel,  
 “ upon any pretence whatsoever, shall forfeit all such wool, or  
 “ other aforesaid woollen or worsted articles, with the package  
 “ thereof, and three shillings for every pound weight of wool, or  
 “ other such woollen or worsted articles, so put, pressed, packed,  
 “ or steaned, the whole of which penalties shall go and be paid  
 “ by the owner or packer of such wool, or other the aforesaid  
 “ woollen or worsted articles, to the person or persons who shall  
 “ seize the same, or sue for such forfeiture.”

Persons packing wool, &c. contrary to this act, or assisting therein, to be liable to the same penalties as exporters of wool.

Persons assisting in such illegal package, giving information of the master packer, &c.

or master packers, &c. discovering their employers, to be entitled to the wool,

and the employers to be liable to the penalties on exporters of wool.

Wharfingers to enter into bond not illegally to ship wool, and to keep an account of wool, &c.

† *Sect. 35.* By 28 Geo. 3. c. 38. s. 31. it is further enacted, "That if any person or persons shall press together, or cause or procure to be pressed together, with any screws, presses, or other engine, any wool, or other the woollen or worsted articles hereby prohibited from being exported, into any truss, sack, pack, bag, or other wrapper, or shall put, press, pack, or stean the same, or cause or procure to be put, pressed, packed, or steaned into any butt, pipe, hogshead, chest, or any other cask or vessel, upon any pretence whatsoever, contrary to the true intent and meaning of this act, every person or persons so offending, and all person and persons aiding and assisting in such packing, shall, over and above the penalties and forfeitures before-mentioned, be subject and liable to the same pains and penalties as are herein-before directed to be inflicted upon exporters of wool; and the court and justices by and before whom such person or persons shall be tried and convicted, shall, and hereby have power and authority to punish every such offender accordingly: provided always, that in case any person or persons who may have assisted in such illegal package shall, before his, her, or their being apprehended for the same, appear before any of his majesty's justices of the peace, and then and there make a true discovery of the master-packer, and other the persons concerned in such illegal package, so that he, she, or they may be prosecuted to conviction, then the person or persons giving such information shall not be liable to the pains and penalties aforesaid, and, on conviction of such offender or offenders, shall be entitled to the wool, or other the woollen or worsted articles so packed; provided always, that in case the master-packer, or any person or persons assisting in such package, shall, before any information shall be taken against him, her, or them therein, discover to any justice of the peace the name or names of the person or persons by whom he, she, or they was or were employed to pack or press the same, so that such person or persons by whom he, she, or they was or were employed, may be prosecuted to conviction for the same, then such master-packer, or the person or persons who shall give such information, shall not be liable to the pains and penalties aforesaid, and shall be entitled to the wool, or other the woollen or worsted articles so sent to be packed, and the person or persons directing such wool, or other the aforesaid woollen or worsted articles, so to be packed, shall, on conviction for the same, be liable to and shall suffer the pains and penalties herein-before directed to be inflicted on exporters of wool."

† *Sect. 36.* By 28 Geo. 3. c. 38. s. 32. it is recited, "That great quantities of wool are frequently lying at the public wharfs in different ports of Great Britain, which wool being under no controul of the commissioners of the customs, or their officers, evil-disposed persons may in the night-time put the same on board vessels ready for sailing to foreign parts; and also in many cases, where wool is regularly entered to be put on board vessels bound coast-ways, it is easy to put on board such vessels in the night-time a larger number of packs of wool than have been

been duly entered for that purpose, and which, by being concealed under such packs as have been duly entered, cannot easily be discovered, and which wool may, after the said ship has proceeded some way on her intended voyage, be put on board other vessels bound to foreign parts;" for remedy whereof it is enacted, "That every person and persons who shall keep any wharf for the reception of wool in or at any port in Great Britain shall, within six months after the passing of this act, and every person and persons who shall hereafter keep any such wharf shall, within one month after, he, she, or they shall begin to keep the same, enter into a bond to the use of the king's majesty, his heirs and successors, in the penalty of two hundred pounds, and which shall be deposited with the commissioners of his majesty's customs at the port of London, that no part of the wool which shall be lodged or deposited with him, her, or them, shall, with his, her, or their privity or consent, be illegally put on board any ship or vessel; and such wharfinger shall also keep a regular entry and account of the quantity of bags or cloths of wool by them received and delivered, the time when, and the names and residence of the persons from whom such wool was so received, and to whom such wool was so delivered, with the marks and numbers upon the sheets, and weight of such wool, a copy of which account shall be by him, her, or them delivered to the principal officers of the customs, at the port at which such wharfinger shall reside, at the end of every six months, and oftener, if the same shall be required by such officer; and if any wharfinger shall refuse to enter into such bond as aforesaid, within the said respective times, he, she, or they so refusing, shall forfeit and pay the sum of two hundred pounds to the person or persons who shall sue for the same; and in case such wharfinger shall refuse to keep and deliver such account, or shall be convicted of keeping or delivering a false account, every such wharfinger shall, for every such offence, forfeit and pay the sum of fifty pounds, to be paid to the person or persons who shall sue for the same; and moreover, if such wharfinger shall at any time knowingly permit or suffer any such wool to be put on board any ship or vessel, otherwise than according to the directions in this act contained, then such wharfinger, and also all and every person and persons who shall be aiding and assisting therein, shall on conviction be subject and liable to the pains and penalties herein-before enacted against the exporters of wool; and any person giving information, so as that such wharfinger, person and persons, or any of them, may be convicted, every such informer shall be entitled to the sum of forty pounds, which sum shall be paid to such informer by the commissioners of his majesty's customs immediately after such conviction."

Penalty on refusing to give bond, or to keep an account of wool, &c. or for suffering it to be illegally shipped.

Informers to be entitled to £40.

† Sect. 37. By 28 Geo. 3. c. 38. s. 33. it is further enacted, "That every person and persons keeping a wharf, at which any wool shall be lodged or received, shall, and he, she, and they is and are hereby required, within seven days next after he, she, or they shall receive any wool at such wharf by land carriage, or by inland navigation, to transmit or deliver a note in writing, signed

Wharfingers to give an account to the proper officer of the quantity of wool received, on penalty of £10.

' signed by the owner of such wharf, or his, her, or their agent, which shall certify and acknowledge the quantity of wool so received, and the number of sheets in which the same is contained, to the customer or comptroller at the port at which such wharf shall be kept, in case there shall happen to be at such port or place any such officer, and, for want thereof, to such other officer of the customs (if any) as shall happen to be stationed at such port or place, upon pain of forfeiting, for every neglect, the sum of ten pounds to any person or persons who shall sue for the same."

Regulations for  
shipping wool,  
&c. to be car-  
ried coastwise.

† Sect. 38. By 28 Geo. 3. c. 38. s. 34. " And the better to prevent any fraudulent exportation of wool, woolfels, mortlings, shortlings, combed wool, woolflocks, or woollen bay yarn, worsted yarn, cruels, or wool slightly manufactured, and which are hereby prohibited from being exported, under the pretence of carrying the same coastwise in the kingdom of Great Britain;" it is further enacted, " That no wool, or any other the last before enumerated articles, and which are hereby prohibited from being exported, shall be put on board any ship, vessel, or boat, to be carried coastwise, or from one port in Great Britain to another, unless notice be first given to the commissioners or chief managers of the customs, or to the customer or collector and comptroller of the customs at the port from which the same is intended to be sent, of the quantity, quality, and package, together with the marks, numbers, and weight thereof, with the name of the ship, and the master or commander, on board of which the said goods are to be laden, together with the name or names of the owner or owners of the said goods, and the place of his or their abode or habitation, and the place and port at which the same are intended to be landed, and the names of the person or persons to whom the same are consigned; and also unless a bond be first entered into to the use of the king's majesty, his heirs and successors, by two good and sufficient persons, in treble the value of the said goods so intended to be carried coastwise, that the same shall (the danger of the seas excepted) be landed accordingly, which said bond shall be executed by the owner or owners of the said goods, or some person or persons by him, her, or them, appointed to execute the same, and which execution shall be deemed to be the act of such owner or owners, or shipper or shippers thereof; which said shipper or shippers, if acting as agent, or having sold such goods to any person or persons, shall and may sue for and recover, of and from the proprietor or proprietors of the goods so shipped, all such sum and sums of money as such shipper or shippers shall or may pay, expend, or be put unto without their wilful default or negligence, for or by reason of his, her, or their entering into such bond or bonds: and in case any such bond or bonds shall be so entered into for any wool, or any other the last herein-before enumerated articles, being the property of different persons, then such owner or owners, or person or persons for whose account such bond was so entered into, shall be accountable for his, her, or their share of the money so expended, in proportion to the  
" amount

“ amount of such goods so shipped; and also unless a license be first taken out under the hands of the commissioners or chief managers of the customs for the time being, or any three of them, or from the customer, or collector and comptroller of the customs where any such bond is given, for the lading, carrying, and landing thereof as aforesaid, which license they are hereby required to grant without any fee or reward, or any other charge to the person demanding the same, any law, statute, or usage to the contrary in anywise notwithstanding; and if any wool, or other of the said last-mentioned goods, shall be carried or laden on board any ship, vessel, bottom, or boat, in order to be carried coastwise, or from one port to another, before such bond shall be entered into, and such license taken out as aforesaid, and before all the directions in this act made to prevent the exportation thereof shall be fully and duly complied with, then all such wool, and other such last-mentioned articles, and which are hereby prohibited from being exported, or the value thereof, shall be forfeited, together with the ship, vessel, bottom, or boat, in which such goods shall be so laden or put on board, and all the guns, ammunition, tackle, apparel, and furniture, of or belonging to such ship, vessel, bottom, or boat, for the benefit of the person or persons first informing thereof.”

If wool, &c. be not shipped to be carried coastwise, according to this act, to be forfeited, with the vessel.

† Sect. 39. By 28 Geo. 3. c. 38. s. 35. “ And whereas in that part of Great Britain called Scotland, there are a great many lochs or inlets of the sea, to and upon which it may be unavoidably necessary to carry wool, and other the said enumerated articles, from one part of the coast of such lochs or inlets to another part of the coasts of the same lochs or inlets, respectively, on board boats or other vessels; and that there are also, adjacent to the coasts of Scotland, a great many islands from whence wool, the produce of the said islands, must necessarily be brought to the mainland of Scotland, or be carried from such mainland to the said islands, by boats or other vessels:” it is therefore enacted, “ That the carrying shipping, or landing of wool, and other the said enumerated articles, to such intent or purposes aforesaid, only to or in such lochs or inlets, or from such islands to the mainland of Scotland, or from such mainland to such islands, shall not be deemed or taken to be carrying, shipping, or landing of wool, or other the said articles, for the purpose of carrying the same coastwise; nor shall the carrying, shipping, or landing of such wool, or other the said herein-before enumerated articles, to or in such lochs or inlets, or from such islands to the mainland of Scotland, or from such mainland to such islands, for such intent or purposes as aforesaid only, be subject or liable to the restrictions or regulations herein contained, respecting the carrying, shipping, and landing of wool, and other the said articles intended to be carried coastwise, any thing herein contained to the contrary thereof in anywise notwithstanding: provided nevertheless, that nothing herein contained shall authorize the carrying such wool, or any other the said articles, to open sea, same as aforesaid, but under such

Wool, &c. may be carried from one part to another of the lochs, or from islands to the mainland, in Scotland, but not to sea, except under the regulations of this act.

“ restrictions



"restrictions and regulations as are herein for that purpose mentioned and expressed."

Customer at the port of shipping not sending proper notice to the officer at the port for which wool, &c. is shipped, to forfeit 10*l*.

Bonds given on shipping wool, &c. to be discharged by a certificate from the officer at the port of landing; which he is to transmit to the officer at the port of shipping within seven days, on penalty of 10*l*.

Certificate of landing to be given the master of the vessel.

Bonds not discharged in six months to be sent to the commissioners of customs.

† *Sect. 40.* By 28 Geo. 3. c. 38. s. 36. it is further enacted,  
 "That when any wool, woolfels, mortlings, shortlings, combed  
 "wool, woolflocks, woollen or bay yarn, worsted yarn, cruels, or  
 "wool slightly manufactured, shall be shipped to be carried  
 "coastwise under the authority of this act, the customer, or col-  
 "lector and comptroller of his majesty's customs at the port  
 "from whence such goods shall have been shipped, shall, im-  
 "mediately on the clearance of such ship at such port, transmit  
 "a notice in writing, setting forth the quantity, quality, and  
 "package of such wool, or other the said last-mentioned articles,  
 "together with the marks and numbers thereof, with the name  
 "of the ship in which the same shall be shipped, and of the  
 "master or commander thereof, to the customer, or collector and  
 "comptroller of the port to which such wool, and other the said  
 "last-mentioned articles, are intended to be conveyed, under the  
 "penalty of ten pounds, to be paid by the officer neglecting to  
 "transmit such notice, which said penalty shall be paid to the  
 "person who shall inform against such officer; and that the  
 "bonds herein-before directed to be entered into on the shipping  
 "of the said wool, and other the said last-mentioned articles,  
 "shall not be discharged until a certificate, under the hand and  
 "seal of the customer, or collector and comptroller of the port  
 "or place in Great Britain where the same were landed, ex-  
 "pressing the quantity, quality, and package, marks, numbers,  
 "name of the ship and master, out of which such wool, and  
 "other the said last-mentioned articles, were landed, shall be  
 "produced to and left with the person or persons in whose pos-  
 "session such bond shall be kept, at the custom house of the  
 "port from whence the said wool, and other the said last-men-  
 "tioned articles, were shipped, and which certificate the said  
 "customer, or collector and comptroller of the said port at which  
 "such wool, and other the said last-mentioned articles, shall be  
 "landed, is hereby required to transmit to the customer, col-  
 "lector and comptroller at the port from whence the same were  
 "shipped, within the space of seven days next after the landing  
 "thereof, under the penalty of ten pounds, to be paid by the  
 "officer neglecting to transmit such certificate to the person or  
 "persons who shall inform against such officer; and the said  
 "customer, or collector and comptroller at the port at which  
 "such wool, or other the said last-mentioned articles, shall be  
 "landed, shall also grant and deliver another certificate of such  
 "landing to the masters or commanders of the ship or vessel  
 "from which the same shall be landed, without fee or reward,  
 "when the same shall be requested: and that all such bonds as  
 "shall remain undischarged by such certificate for the space of  
 "six calendar months, shall be transmitted to the commissioners  
 "of the customs at London, who are hereby required to put  
 "them in suit immediately; and if the wool, or other the said  
 "articles mentioned in such notices, shall not be landed at the  
 "port to which the same were consigned within a reasonable  
 "time

time for that purpose, then the customer, or collector and comptroller at the port to which the same were licensed to be sent, shall transmit a notice thereof to the customer, or collector and comptroller at the port from whence such wool or other articles were shipped, in order that proper inquiry may be immediately made in what manner the same have been disposed of or delivered, and which inquiry the said customer, or collector and comptroller, is and are hereby required to make without delay."

Notice of wool not landed in a reasonable time to be sent to the officer at the port of shipping, who is to inquire how it has been disposed of.

† Sect. 41. By 28 Geo. 3. c. 38. s. 37. it is further enacted, That no wool or any other the said herein-before enumerated woollen or worsted articles, fullers earth, fulling clay, or tobacco-pipe clay, shall be put on board any ship, vessel, or boat, bound to parts beyond the seas, on any pretence whatsoever, under the penalty of forfeiture, for the benefit of the person or persons who shall inform thereof, of all such goods, and also of such ship, vessel, bottom, or boat, on which such goods shall be so laden or put on board, and all the guns, ammunition, tackle, apparel, and furniture belonging to such ship, vessel, bottom, or boat; and moreover the master or commander of such ship or vessel, bottom, or boat, shall in such case be deemed the exporter thereof, and shall be subject and liable to the pains and penalties in such case made and provided, unless such master or commander shall and do, immediately upon his being apprehended, discover and make known the person or persons who actually shipped such goods, and enter into a recognizance with two sufficient sureties, before some justice of the peace for the county, city, borough, or place, in or at which such last-mentioned goods shall be discovered, to prosecute and give evidence against such shipper so that he may be convicted thereof."

Wool, &c. shipped for parts beyond the seas, to be forfeited, and the vessels.

Masters to be subject to the penalties, except they discover the shippers.

† Sect. 42. By 28 Geo. 3. c. 38. s. 38. it is provided, "That nothing in the above exception contained shall extend to the masters or commanders of ships or vessels not regularly clearing out to foreign parts, but that if any wool, or other the said last-mentioned goods, shall be discovered on board any such ship or vessel, and where no such clearance can be exhibited, then, and in such case the master or commander of such ship or vessel shall be deemed the shipper of such goods, and such master or commander, and also all and every person and persons on board any such ship or vessel, knowing of any such illicit transaction, shall be liable to the pains and penalties herein-before enacted against the exporters of wool: provided also, that in case any person or persons on board any ship not regularly cleared out to foreign parts, other than the master or commander thereof, shall, immediately on his or their being apprehended, give information, so that such master or commander may be convicted, or the ship or vessel condemned, every such person and persons so informing shall not be liable to any pains and penalties to which he or they might otherwise be liable, and shall also be entitled to a reward of forty pounds, which reward shall be paid to such informer or informers by

Masters of vessels not regularly cleared out to foreign parts, as well as all on board privy to any illicit transaction, to be liable to the same penalties as exporters of wool.

Informers to be entitled to 40l.

"the

“ the commissioners of his majesty’s customs immediately after  
“ such conviction.”

Masters of ves-  
sels or drivers  
of carts, &c.  
exempted from  
punishment, if  
it is proved  
from the small-  
ness of the  
quantity that  
they were not  
privy to wool,  
&c. being in  
their vessels,  
&c.

† Sect. 43. By 28 Geo. 3. c. 38. s. 39. it is also provided,  
“ That nothing in this act contained shall extend, or be con-  
“ strued to extend, to prevent evidence from being received, in  
“ any suit or information brought for the forfeiture of any vessel  
“ bound coastwise, or to foreign parts, which shall have been  
“ regularly cleared out, and also the guns, ammunition, tackle,  
“ apparel, and furniture thereto belonging, for or on account of  
“ any wool, or any other the said herein-before enumerated ar-  
“ ticles, and which are hereby prohibited from being exported,  
“ which shall be found or discovered on board any such vessel  
“ so regularly cleared out, or for the forfeiture of any other ship or  
“ vessel, other than such as shall not have been regularly cleared  
“ out, or for the forfeiture of any waggon, cart, carriage, horses,  
“ or other beasts of burthen, wherein or whereupon any wool, or  
“ any other the said herein-before enumerated articles, shall be  
“ laid, or which shall be carrying or conveying the same, or in  
“ any prosecution which shall be brought against the master or  
“ commander of such vessel, owner, or driver of such waggon,  
“ cart, carriage, horse, or other beast of burthen, in order to  
“ shew, from the smallness of the quantity of the said wool, or  
“ other the said articles, that the same were on board such ves-  
“ sel, or within such waggon, cart, or carriage, or upon such  
“ horse or beast of burthen, without the knowledge and privity  
“ of the owner, or of the master or other person having the  
“ charge or command of such vessel, or the care of such waggon,  
“ cart, carriage, horse, or other beast of burthen, and without any  
“ any wilful neglect, or want of reasonable care in the discharge  
“ of the duty of such owner, master, or other person having the  
“ charge or command of such ship or vessel, or the care of such  
“ waggon, cart, carriage, horse, or other beast of burthen; and  
“ in every such case where proof shall be made, from the small-  
“ ness of the quantity of wool, or other the said articles, and  
“ other circumstances, that such small quantity was on board  
“ such vessel, or within such waggon, cart, or carriage, or upon  
“ such horse or beast of burthen, without the knowledge, pri-  
“ vity or consent either of the owner, or the master or other  
“ person having the charge or command of such ship or vessel,  
“ or the care of such waggon, cart, carriage, horse, or other beast  
“ of burthen, and without any wilful neglect, or want of reason-  
“ able care, either in the owner, or in the master or other per-  
“ son having the charge or command of such ship or vessel, or  
“ the care of such waggon, cart, carriage, horse, or other beast  
“ of burthen, then, and in every such case, such owner, master,  
“ or commander, or crew on board such ship or vessel, person  
“ or persons, shall not be punished, nor shall such ship or  
“ vessel, ammunition, tackle, apparel, or furniture belonging  
“ thereto, or such waggon, cart, or other carriage, horse, or other  
“ beast of burthen, be forfeited, for or on account of such small  
“ quantity of wool, or other the said herein-before enumerated  
“ articles, having been found or discovered on board of such  
“ ship

“ship or vessel, or within such waggon, cart, or other carriage,  
“or upon such horse or other beast of burthen.”

† *Sect. 44.* By 28 Geo. 3. c. 38. s. 40. it is provided, “That  
“the wool, and other the said herein-before enumerated articles,  
“hereby prohibited from being exported, which shall be found  
“on board any such ship or vessel, or within such waggon, cart,  
“or carriage, or upon such horse or beast of burthen, shall be  
“forfeited to the person or persons who shall find, discover, and  
“seize the same.” but the wool, &c. to be forfeited.

*Sect. 45.* By 28 Geo. 3. c. 38. s. 41. it is further enacted,  
“That a register of all wool, and other the articles before enu-  
“merated, and sent coastwise, with the quantity, quality, and  
“package thereof, the name of the ship and master, the name of  
“the shipper or shippers of such goods, and the name or names  
“of the person or persons to whom the same shall be consigned,  
“and his or their place of abode, and also a register of the re-  
“turn of the landing of the wool or other articles so shipped,  
“shall be kept by the customer, or collector or comptroller at  
“each port, and a copy thereof shall be transmitted once in  
“every six months to the commissioners of his majesty’s cus-  
“toms at the port of London, there to be registered in a book to  
“be kept at the custom-house, by some person or persons to be  
“by the said commissioners appointed for that purpose; and  
“which register and registers shall at all seasonable times be  
“inspected, on payment of the sum of one shilling by any person  
“or persons whomsoever, on application for that purpose; and a  
“printed copy of such register shall, within sixty days next after  
“the end of each year, be transmitted by the commissioners of  
“his majesty’s customs at the said port of London to the re-  
“spective custom-houses within this kingdom, and which said  
“copies so transmitted shall be inspected by any person, on pay-  
“ment of the like fee in manner aforesaid, upon application for  
“that purpose.” Port officer to keep a register of all wool, &c. sent coastwise, and to send a copy half-yearly to the commissioners of customs.

The register at the custom-house in London to be inspected for 1s. and a copy of it transmitted annually to every custom-house.

† *Sect. 46.* By 28 Geo. 3. c. 38. s. 42. it is further enacted,  
“That no master or commander of any ship or vessel, who shall  
“ship or load any wool to be carried coastwise, shall, at any  
“time, under any pretence whatsoever, unpack, or permit or  
“suffer to be unpacked any wool to him delivered (except by or  
“through absolute necessity, of which necessity such master and  
“commander shall make oath in writing before one of his ma-  
“jesty’s justices of the peace, on his arrival at the port to which  
“such wool shall be consigned), upon pain of forfeiting, for  
“every bag so unpacked, the sum of forty shillings to the owner  
“or owners, proprietor or proprietors of such wool.”

If wool shipped to be carried coastwise be unpacked, the master of the vessel to forfeit 40s. for each bag.

† *Sect. 47.* By 28 Geo. 3. c. 38. s. 43. “And for the better pre-  
“venting of frauds in the collusive landing of any wool, or woollen  
“or worsted yarn, or in the shipping or landing any of the several  
“articles herein-before enumerated, carried coastwise:” it is  
“further enacted, “That none of the said articles carried coast-  
“wise shall be shipped or landed, but in the presence of the  
“proper officers appointed to attend the same, nor at any other  
“place or places than the lawful quays set out in the manner  
“prescribed by the act of Frauds passed in the fourteenth year

Wool, &c. carried coastwise, to be shipped and landed in the presence of an officer, and at lawful quays, on penalty of forfeiture of the wool, and 3s. of every lb.

“ of

"of king Charles the Second, for England, Wales, and Berwick upon Tweed, and by the act passed in the sixth year of the reign of her late majesty queen Anne, for settling a court of exchequer in Scotland for that part of the united kingdom, or at such other wharfs or places as the commissioners of the customs, or any three of them (and which they are hereby empowered to do) shall from time to time, by writing under their hands, appoint for that purpose (such appointment to continue in force until they shall revoke the same) without special sufferance, and leave had and obtained from the commissioners or principal officers of the customs, upon pain of forfeiting the said wool, or other articles, or the value thereof, and three shillings for every pound weight of such wool, or other articles, to be paid, by the person or persons concerned in such unlawful shipping or landing, to the person or persons who shall inform thereof."

Cocquets and certificates to be written on paper; the weight, &c. of the wool, &c. to be expressed in them.

† *Sect. 48.* By 28 Geo. 3. c. 38. s. 44. it is further enacted, "That all cocquets for carrying wool, or any other the aforesaid articles, from any port within the kingdom of Great Britain, or the isles aforesaid, shall be written on paper, and not parchment, and signed by three or more of the chief officers of such respective ports, and all certificates of landing the same again, in any other of the said ports, shall be written upon paper only, and signed in like manner; and that all such wool, and other the aforesaid articles, both at shipping and landing, shall be weighed in the presence of the said officers giving such cocquets and certificates respectively, and that the exact weight, marks, and numbers of such wool, and other the aforesaid articles, so shipped and landed, shall be likewise particularly expressed in the said cocquets and certificates, respectively, and written therein, without any obliteration, erasure, or interlineation whatsoever."

Persons insuring the conveyance of sheep, &c. to foreign parts, liable to the same penalties as exporters of wool.

† *Sect. 49.* By 28 Geo. 3. c. 38. s. 45. it is further enacted, "That all and every person and persons who by way of insurance or otherwise, shall undertake or agree that any sheep, wool, or any other of the articles herein-before enumerated, shall be carried or conveyed to any parts beyond the seas, from any port or place whatsoever within this kingdom, contrary to the true intent and meaning of this act, or in pursuance of such insurance, undertaking, or agreement, shall deliver, or cause or procure to be delivered, any sheep, wool, or any of the said articles, in any parts beyond the seas, such person or persons, and all and every their aiders, abettors, and assistants, shall, upon his and their conviction, be liable to be punished in the same manner as is herein-before directed with respect to the exporters of wool."

Persons paying for such insurance, liable to the like penalties, and to forfeit the articles insured.

† *Sect. 50.* By 28 Geo. 3. c. 38. s. 46. it is further enacted, "That all and every person and persons whosoever, who shall pay or agree to pay any sum or sums of money for the insuring, conveying, or exporting any sheep, wool, or other the articles hereby prohibited from being exported, contrary to the true intent and meaning of this act, shall, upon his and their conviction, be liable to be punished in manner as herein-before  
"directed

“directed respecting the exporters of sheep or wool; and moreover, such sheep, wool, or articles aforesaid, which shall be so insured, shall become forfeited to the person or persons who shall sue for the same.”

† *Sect. 51.* By 28 Geo. 3. c. 38. s. 47. it is further enacted, “That in case the insurer, conveyor, or manager of or in such fraud, or the person or persons agreeing to insure, convey or manage therein, do and shall, within the space of six months after such transaction or agreement, first give notice thereof to the commissioners of the customs in Great Britain for the time being, so as the person or persons concerned with him, her, or them in such offence be convicted thereof, he, she, or they, so first making such discovery, shall not only be clearly acquitted and discharged of such offence, and from the punishment to which he, she, or they is or are liable by reason thereof, but shall also have, to his, her, or their own use, such sheep, wool, and other the articles herein enumerated, and which shall be insured, after the charges of prosecution are deducted, and shall likewise retain and enjoy, to his, her, and their own use, the insurance money or reward, given or paid to him, her, or them therein; and in case the party or parties insured shall, within the like space of six months, first make discovery thereof to the said commissioners of the customs, so as the person or persons concerned with him, her, or them in such offence, shall be convicted thereof, he, she, or they so first discovering, shall recover and receive back such insurance money or premium as he, she, or they have or hath paid upon such insurance or agreement; and in case the said insurance money or premium shall not at the time of such discovery be actually paid, then the person or persons so first discovering is and are hereby saved harmless, and indemnified from paying the same, or any part thereof, and all and every the agreement or agreements entered into for paying such monies is and are hereby declared to be null and void, and the person and persons so first discovering shall also be clearly acquitted and discharged of and from the punishment hereby directed to be inflicted upon him, her, or them, and to which he, she, or they would have been otherwise liable.”

Any person concerned in such insurance giving information to the commissioners of the customs, to have the sheep, &c. or if the informant be insured, to receive back the premium, &c.

† *Sect. 52.* By 28 Geo. 3. c. 38. s. 48. it is recited, “That policies of insurance are commonly made on goods and merchandizes, as well as on ships and vessels, wherein the insurer undertakes, in consideration of a premium given him by the assured, to bear all the risk and hazard of the voyage, and it is generally unknown to the insurers what sort of goods and merchandizes are laden on board any ship or vessel; whereby it frequently may happen that insurances may be made on wool or woollen yarn, or other the articles hereby prohibited to be exported, to be carried from Great Britain to foreign parts, as well as on the ships or vessels having on board such wool, woollen yarn, or other articles: and whereas the discouraging of all such insurances may be the means to prevent the fraudulent exportation of such wool, woollen and worsted yarn, and other the said herein-before enumerated articles:” it is therefore enacted, “That all policies of insurance which shall be made on goods” and

Policies of insurance to be void, if made on wool, &c. to foreign parts.

"and merchandizes laden or to be laden on any ship or vessel bound from Great Britain to foreign parts, which shall afterwards appear to be wool, woollen or worsted yarn, or any of the before-enumerated articles hereby prohibited from being exported, shall be deemed and taken to be null and void, notwithstanding any words or agreement whatsoever, which shall be inserted in any such policy of insurance, and nothing shall be recovered by the assured from the insurer for loss or damage, or for the premium which shall have been given as the consideration for insuring such wool, woollen or worsted yarn, or such other articles; any law, custom, or usage, to the contrary notwithstanding."

Commanders &c. of king's ships to search vessels, and seize such as have sheep, &c. on board without a licence.

† *Sect. 53.* By 28 Geo. 3. c. 38. s. 49. it is further enacted, "That it shall be lawful for the master or commander, or any other commissioned or deputed officer of any of his majesty's ships or sloops, in any port, creek, or road, or in the open seas, within the limits of the station which shall be assigned to any such ships or sloops, and he is hereby required to enter and search, or cause to be entered and searched, any ship, vessel, or boat, and if upon such search any sheep, wool, or any other of the said articles hereby prohibited from being exported, shall be found therein, and the master or commander of such ship, vessel, or boat, shall not immediately produce to the commander of such ship or sloop a lawful cocquet or warrant, licensing such articles to be carried coastwise, or to the said isles, or some of them, such commander is hereby directed to take and seize such ship, vessel, or boat, and to carry the same, together with the crew and cargo thereof, into some port in Great Britain, and there deliver the same into the custody of the collector and comptroller of such port."

Wool, &c. when seized, to be lodged in the king's warehouse till condemned;

wool, &c. and vessels to be sold, and the produce divided as herein mentioned.

† *Sect. 54.* By 28 Geo. 3. c. 38. s. 50. it is further enacted, "That all the wool, and other the said articles hereby prohibited from being exported, found on board any ship, vessel, or boat, contrary to the intent and meaning of this act, and which are hereby declared to be forfeited, and which shall have been so seized by any of his majesty's ships or sloops, shall be lodged in the king's warehouse in such port where the same shall be taken or seized, or into which the same shall be brought, until condemned according to law, and being so condemned, such wool and other such articles shall be exposed publicly to sale, after sixty days public notice being given in writing at the custom-house of the said port, and on the Royal Exchange of London, by inch of candle, to the last and best bidder; and all ships, vessels, or boats, that shall be so seized, and which are hereby declared to be forfeited, and which shall be condemned as aforesaid, shall, together with all their guns, tackle, furniture, and apparel, be exposed to sale in like manner, and the produce of the wool, or such aforesaid articles, ships, vessels, or boats; so sold as aforesaid, after deducting the expenses and charges of the prosecution and condemnation, shall be divided in manner following, (that is to say) one third part thereof to the commander or commanders, one third part to the officers of the ship or ships, sloop or sloops, that took the same,

“ same, and the remaining third part to the mariners belonging  
 “ to such ship or ships, sloop or sloops, to be equally divided  
 “ and paid amongst the said mariners, by the collectors of the  
 “ said port, or such person or persons as shall be authorized to  
 “ pay the same; and that if such seizure shall be made upon the  
 “ information of any person or persons not being a mariner on  
 “ board any such ship or sloop so appointed to cruize, such in-  
 “ former or informers shall not only be indemnified from the  
 “ pains, penalties, and forfeitures, to which exporters of the said  
 “ prohibited articles, their aiders and abettors, are liable, but  
 “ shall also receive one third part of the produce of such sale or  
 “ sales, after deducting the expenses attending the same, and the  
 “ residue thereof shall be divided and distributed in manner as is  
 “ before directed.”

† *Sect. 55.* By 28 Geo. 3. c. 38. s. 51. it is further enacted,  
 “ That every commander of such ship or sloop neglecting his  
 “ duty by this act required, shall lose and forfeit all pay and  
 “ wages due to him or them, and suffer six months imprison-  
 “ ment, and be for ever incapable of serving his majesty in any  
 “ office in the navy, customs, excise, or salt duties; and that any  
 “ person or persons giving information against any such com-  
 “ mander for neglecting his duty shall, on the conviction of such  
 “ offender or offenders, be entitled to receive and have the sum  
 “ of forty pounds, to be paid to such informer immediately after  
 “ such conviction, by the commissioners of the customs, excise,  
 “ or salt duties, or other his majesty’s revenue as herein-after  
 “ mentioned, with respect to forfeitures incurred by persons un-  
 “ able to pay the same.”

Penalty on  
commanders of  
ships neglecting  
their duty.

Informers of  
such neglect to  
be paid 40*l*.

† *Sect. 56.* By 28 Geo. 3. c. 38. s. 52. it is provided,  
 “ That in order to prevent collusive seizures and agreements, and  
 “ fraudulent practices, whereby the penalties and forfeitures in-  
 “ flicted by this act may be evaded, it shall not be lawful for any  
 “ person or persons, except an officer of his majesty’s customs,  
 “ excise, or salt duties, who shall have cause to suspect that any  
 “ sheep, wool, or any of the before-enumerated articles, and which  
 “ are hereby prohibited from being exported, is or are carrying  
 “ or conveying, contrary to the directions and true intent and  
 “ meaning of this act, to examine or seize such sheep, wool, and  
 “ other the said enumerated articles, other than together and in  
 “ company with a constable, or other officer of the peace, who are  
 “ hereby required, on application being made to him or them,  
 “ immediately to attend the person or persons applying for such  
 “ assistance; any thing herein-before contained to the contrary  
 “ thereof in any wise notwithstanding.”

No person, ex-  
cept an officer  
of the customs,  
&c. to seize  
sheep, &c. with-  
out a constable.

† *Sect. 57.* By 28 Geo. 3. c. 38. s. 53. it is further enacted,  
 “ That if any constable or other officer of the peace, or if any  
 “ officer of his majesty’s customs, excise, or salt duties, upon ap-  
 “ plication being made to him for that purpose, shall neglect, or  
 “ refuse to attend any person or persons who shall make such ap-  
 “ plication, or shall neglect his duty in the premises, every such  
 “ constable, or other officer of the peace, and officer of his ma-  
 “ jesty’s customs, excise, or salt duties, shall forfeit and pay for  
 “ every such offence the sum of twenty pounds, one moiety  
 “ whereof,

Constables, &c.  
neglecting their  
duty to forfeit  
20*l*.



Nothing in this act to take away the power given to commanders of king's ships to seize vessels, &c.

"whereof, when recovered, and after deducting the costs and charges of recovering the same, shall go to the person or persons suing for the same, and the other moiety thereof to the use of the poor of the parish or place where the offence shall have been committed: provided always, that nothing in this act contained shall extend, or be construed to extend, to take away the power hereby given to the commanders and officers of his majesty's ships of war, or armed sloops, to take and seize any ship, vessel, or boat, having therein any sheep, wool, or other the said enumerated articles, the master or commander whereof shall not produce any such cocquet or warrant as aforesaid."

All persons acting under the authority of the commissioners of customs, &c. to be deemed their officers.

† *Sect. 58.* By 28 Geo. 3. c. 38. s. 54. "And to prevent any dispute relating to the authority of any person or persons acting as an officer or as officers of the customs, excise, or salt duties in this kingdom, for putting in execution this act," it is further enacted, "That every person who, by deputation, commission, or other instrument, under the hands and seals of the commissioners of the customs, excise, or salt duties in this kingdom, or the isles aforesaid respectively, shall be appointed to act as an officer or servant under them for putting this act in execution, shall be esteemed an officer of the customs, excise, or salt duties respectively, to all intents and purposes whatsoever."

Persons making collusive seizures, &c. to be subject to the like penalties as exporters of wool;

† *Sect. 59.* By 28 Geo. 3. c. 38. s. 55. is further enacted, "That if any officer of the revenue, or other person or persons, shall, directly or indirectly, make any collusive seizure or information of any of the said articles hereby prohibited from being exported, or any fraudulent or collusive agreement whatsoever, whereby the owner or claimer thereof, their agents or servants, or any offender or offenders against this act, may avoid the forfeitures, punishments and penalties, or any part thereof, incurred or inflicted by this act, he, she, and they shall, upon conviction, be subject to the like penalties as are hereinbefore directed to be incurred by the exporters of wool; and every such information and seizure, and all the proceedings thereupon had, shall be and are hereby declared to be for the benefit only of the person or persons (not being an accomplice or accomplices) who shall first discover such collusive information and seizure; provided nevertheless, that any person whatsoever, concerned in any such collusive or fraudulent seizure or agreement, who shall first discover such his offence to the commissioners of the customs for the time being, shall be clearly acquitted and discharged thereof, provided he makes such discovery within the space of three months after the offence shall have been committed, and so as any one or more of his accomplices therein be convicted thereof; and if such person first making such discovery as aforesaid, within the time aforesaid, be not an officer of his majesty's revenue, or owner of the goods, he or she shall, as a further encouragement for making such discovery, have and receive, to his and her own use and benefit, the sum of forty pounds, the same to be paid by the commissioners of the customs on the conviction or convictions of such offender or offenders."

and the seizures, &c. to be to the person discovering the collusion.

Any person concerned in such collusion making the first discovery thereof, to be acquitted;

and if not a revenue officer or owner of the goods, to have 40*l.*

† *Sect.*

† Sect. 60. By 28 Geo. 3. c. 38. s. 56. for the more effectual putting this act in execution, it is further enacted, " That if any person or persons whosoever, putting this act in execution, shall be hindered, opposed, obstructed, molested, wounded, or beaten, in seizing or attempting to seize any sheep, wool, wool-fels, woolflocks, mortlings, shortlings, or any other species of goods before enumerated, by any person or persons whomsoever, either in the day or night, by land or water, which were intended to be exported, or which were carrying on board any ship or vessel contrary to this act, the person or persons who shall so hinder, oppose, obstruct, molest, wound, or beat, any such person or persons in the making, or attempting to make, such seizures as aforesaid, and also all and every other person or persons whatsoever, being armed with offensive arms or weapons, or wearing any vizard, mask, or other disguise, who shall rescue, or attempt to rescue, any sheep, wool, or other the goods aforesaid, which shall have been seized according to the directions of this act, every such person or persons that shall be convicted of any of the said offences shall, by order of the court before whom such offender or offenders shall be convicted, be transported to some place beyond the seas for such term as such court shall think fit, not exceeding seven years; and if any such offender or offenders shall return into Great Britain before the expiration of the time for which he, she, or they shall be so transported, contrary to the intent and meaning hereof, he, she, or they, so returning, and being duly convicted thereof, shall suffer as felons, and have execution awarded against them, as persons attainted of felony, without benefit of clergy.

Persons opposing any one in the execution of this act to be transported.

See post. Smuggling, tit. "Offences against the revenue," 52 Geo. 3. c. 143. s. 11.

† Sect. 61. By 28 Geo. 3. c. 38. s. 57. it is further enacted, " That if any person or persons whosoever shall offer or promise to give any bribe, or recompense or reward whatsoever, to any officer or officers of the customs, excise or salt duties, or to any persons whomsoever, to connive at, or permit the exportation or the concealment of any sheep, wool, or other the articles hereby prohibited from being exported, or the removing thereof, contrary to this act, or to conceal or connive at any other act whereby any of the provisions hereby made may be evaded or broken, every such person or persons so offending shall, for every such offence (whether the same offer, proposal, or promise, be accepted or performed or not), forfeit and pay the sum of three hundred pounds, to be recovered and applied to the use of him, her, or them, who shall inform or sue for the same, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, wherein no essoin, protection, or wager of law, or more than one imparlance, shall be allowed."

Persons offering bribes to connive at any evasion of this act to forfeit 300*l*.

† Sect. 62. By 28 Geo. 3. c. 38. s. 58. it is further enacted, " That every officer of his majesty's excise, customs, or salt duties, neglecting the duty by this act required, or compounding for any ship, vessel, sheep, wool, or other the articles herein-before mentioned, and which are by this act directed to be forfeited, shall be deemed aiders and abettors in the exportation

Officers of the excise, &c. neglecting their duty, to suffer the same punishment as exporters of wool.

"tion of sheep, wool, and other the articles aforesaid, which are  
 "hereby prohibited from being exported, and suffer the punish-  
 "ment herein enacted against the exporters thereof."

Bonds not to  
 be chargeable  
 with stamp  
 duties.

† *Sect. 63.* By 28 Geo. 3. c. 38. s. 59. it is provided, " That  
 " all bonds taken, or to be taken, in pursuance of this act, shall  
 " not be chargeable with any of the duties upon stamped vellum,  
 " parchment, or paper, any law or statute made, or to be made,  
 " to the contrary notwithstanding."

In all prosecu-  
 tions the proof  
 to lie upon the  
 defendant.

† *Sect. 64.* By 28 Geo. 3. c. 38. s. 60. it is further enacted,  
 " That in all questions, prosecutions, suits, and informations,  
 " which shall happen to arise or be commenced, brought, sued,  
 " or prosecuted, between or against any person or persons for any  
 " thing done or committed, or neglected to have been done, con-  
 " trary to the directions, true intent, and meaning of this act,  
 " touching or concerning the sheep, wool, or other articles here-  
 " by prohibited from being exported, it shall not be necessary for  
 " the prosecutor, or person or persons commencing, bringing, or  
 " prosecuting any such suit, indictment, or information, nor shall  
 " he, she, or they be obliged or required, upon any hearing or  
 " trial thereof, to prove that such sheep was or were of the breed  
 " of this kingdom, or that such wool was of the growth of this  
 " kingdom, but that, without any such proof, upon every such  
 " hearing and trial, it shall be held, deemed, and taken, that such  
 " sheep was or were of the breed of this kingdom, and such wool  
 " of the growth of this kingdom, unless the contrary shall be  
 " proved by or on the part of the person or persons who shall  
 " happen to be defendant or defendants in or upon any such  
 " hearing or trial, any law or usage to the contrary notwithstanding."

Prosecutions  
 may be com-  
 menced in any  
 court of record  
 at Westminster,  
 &c.

† *Sect. 65.* By 28 Geo. 3. c. 38. s. 61. it is further enacted,  
 " That all actions, suits, prosecutions, and informations, to be  
 " had and commenced upon this, or upon the said recited act of  
 " the ninth and tenth year of his late majesty King William  
 " the Third, for or in respect of any offence or offences done or  
 " committed against this or the said recited act, or for or in re-  
 " spect of any penalty or forfeiture in or by the said acts, or  
 " either of them, imposed or inflicted, shall and may be entered  
 " and prosecuted (except where it is in this act otherwise di-  
 " rected) in any of his majesty's courts of record at Westminster,  
 " or in the court of exchequer in Scotland, or in any court of  
 " oyer and terminer, great session, or gaol delivery, or at the  
 " quarter-sessions of the peace, or before any two justices of the  
 " peace for any county, city, or place in this kingdom, in a sum-  
 " mary way, at the election of the seizer or informer, wherein no  
 " essoin, protection, or wager of law, shall be allowed, or any  
 " more than one imparlance."

No prosecu-  
 tion to be pro-  
 ceeded upon in  
 a summary way  
 for more than  
 200l.

† *Sect. 66.* By 28 Geo. 3. c. 38. s. 62. it is provided,  
 " That no prosecution or information shall be had, commenced,  
 " brought, or proceeded upon, before any two such justices of  
 " the peace in a summary way, where the seizure, penalty,  
 " or forfeiture then claimed shall exceed, in the whole, the sum  
 " of two hundred pounds."

† *Sect.*

† *Sect. 67.* By 28 Geo. 3. c. 38. s. 63. it is further enacted,  
 “ That the said justices who shall be assembled at any such  
 “ general quarter-sessions of the peace, and also such aforesaid  
 “ two justices, shall, and they are hereby empowered and re-  
 “ quired to, order and direct all such ships, vessels, goods,  
 “ carriages, and cattle, as shall be by them declared to be for-  
 “ feited, and which shall have been seized by virtue of this or the  
 “ said recited act, to be publicly sold to the highest bidder, at  
 “ such time and place as they shall think proper and direct; and  
 “ also, by their order or warrant, to levy all and every the penal-  
 “ ties and forfeitures which shall have been incurred by any  
 “ offender or offenders against this or the said recited act, and  
 “ also all such costs as shall have been awarded upon any appeal  
 “ touching the same, by distress and sale of the goods and  
 “ chattels of such offender or offenders, rendering the overplus  
 “ (if any) to the owner and owners of such goods and chattels,  
 “ after deducting the reasonable charges of such distress and  
 “ sale.”

Justices to order  
 seizures to be  
 publicly sold,  
 and penalties to  
 be levied by dis-  
 tress.

† *Sect. 68.* By 28 Geo. 3. c. 38. s. 64. it is further enacted,  
 “ That one clear moiety of the respective seizures, penalties, and  
 “ forfeitures (except the penalties of the bonds) by this act di-  
 “ rected to be inflicted upon offenders against the same (except  
 “ such as are by this act otherwise directed and applied) shall,  
 “ when recovered, be paid and applied to such person or persons  
 “ who shall give such information to any officer of his majesty’s  
 “ customs, excise, or salt duties, as may be the means of re-  
 “ covering the same; and that after deducting the expenses of  
 “ recovering such penalties, the remainder of the other moiety  
 “ shall be paid to the officer or officers assisting in making any  
 “ such seizures; but that in case any officer or officers of his ma-  
 “ jesty’s customs, excise, or salt duties, shall make any of the  
 “ seizures herein-before directed without information, then, after  
 “ deducting the expenses of recovery as aforesaid, the remainder  
 “ of such produce shall be paid to the officer or officers seizing  
 “ the same.”

How penalties  
 are to be ap-  
 plied.

† *Sect. 69.* By 28 Geo. 3. c. 38. s. 65. it is further enacted,  
 “ That it shall any may be lawful to and for any officer or officers  
 “ of his majesty’s customs, excise, or salt duties, constables, and  
 “ other officer or officers of the peace, and for all persons acting  
 “ in their or any of their aid or assistance, to stop, arrest, and de-  
 “ tain all and every the person and persons who shall be found  
 “ actually exporting, or attempting to export, any sheep, wool, or  
 “ any other the said herein-before enumerated articles, or who  
 “ shall be aiding, abetting, or assisting in the exporting, or at-  
 “ tempting to export the same, or any of them, and him, her, and  
 “ them, to carry and convey before one or more of his majesty’s  
 “ justices of the peace near to the place where the offence shall  
 “ be committed or done, and the justice or justices shall, if he or  
 “ they see cause, commit the person or persons so brought be-  
 “ fore him or them to the county gaol or house of correction  
 “ until the next general quarter-sessions of the peace to be holden  
 “ for the same country, riding, division, or place, there to be tried  
 “ and dealt with as by this act is directed; and the justices at

Persons export-  
 ing sheep, &c.  
 to be carried be-  
 fore a justice,  
 who may com-  
 mit them to  
 gaol, &c.

“such sessions are hereby authorized and required to examine,  
 “hear, try, and determine all and every such offence and offences,  
 “and, upon conviction of the offender or offenders, to punish  
 “him, her, or them in manner herein-before mentioned.”

Persons convey-  
 ing offenders be-  
 fore justices to  
 enter into re-  
 cognizances to  
 prosecute.

† *Sect. 70.* By 28 Geo. 3. c. 38. s. 66. it is further enacted,  
 “That the officer or officers, person or persons, who shall convey  
 “any offender arrested by the authority of this act before any  
 “justice of the peace as aforesaid, shall, in case such offender  
 “shall be committed to prison as aforesaid, enter into recogni-  
 “zance to his said majesty, his heirs and successors, before such  
 “justice, in the sum of forty pounds, conditioned to appear at  
 “such general quarter-sessions of the peace, and to prosecute  
 “the person or persons so committed.”

Where goods  
 are insufficient  
 to answer pec-  
 uniary penal-  
 ties, the of-  
 fender may be  
 committed.

† *Sect. 71.* By 28 Geo. 3. c. 38. s. 67. it is further enacted,  
 “That if it shall appear to the satisfaction of the justices before  
 “whom any offender or offenders shall be convicted of any of the  
 “offences herein-before mentioned, for which only a pecuniary  
 “penalty is hereby imposed, either by the confession of the party  
 “convicted, or by the testimony of a credible witness, that such  
 “offender or offenders have not nor hath goods or chattels suffi-  
 “cient to answer the penalty or penalties against him, her, or  
 “them recovered, then, without giving any warrant for the pur-  
 “pose, or if such penalty or penalties cannot be wholly levied by  
 “virtue of the warrant or warrants which shall be for that pur-  
 “pose issued, the justices who shall have convicted such offender  
 “or offenders, or any other two justices of the same county, divi-  
 “sion, borough, town, or place, upon proof thereof, shall and  
 “lawfully may commit every such offender or offenders to the  
 “common gaol or house of correction of the county or place in  
 “or for which such justice or justices shall then act, there to re-  
 “main, without bail or mainprize, for any time not exceeding three  
 “calendar months, unless the whole of such penalty or penalties  
 “shall be sooner paid.”

Justices may  
 accept security  
 for pecuniary  
 penalties,

† *Sect. 72.* By 28 Geo. 3. c. 38. s. 68. it is provided, “That  
 “if any offender ordered to be committed to prison under or by  
 “virtue of this act, for any offence for which a pecuniary penalty  
 “alone is hereby imposed, shall, before his actual commitment to  
 “prison, procure security to be given by two sufficient sureties,  
 “to the satisfaction of the justices before whom he shall have  
 “been convicted, for payment of the penalty or penalties by him  
 “incurred, with the charges incident to his conviction, within the  
 “space of fourteen days, exclusive of the day of conviction, then  
 “and in such case it shall and may be lawful for such justices to  
 “accept such security; and upon non-payment thereof, at the  
 “time stipulated for that purpose, it shall and may be lawful to  
 “and for the same justices, or any other two justices of the  
 “peace for the same county, division, or place, to cause the party  
 “convicted, and his sureties, to be apprehended by warrant or  
 “warrants under his or their hands and seals, and them, and each  
 “and every of them, to commit to the common gaol or house of  
 “correction of the county, division, or place, in or for which such  
 “justices shall act, for such space of time as the party con-  
 “victed was subject and liable to have been imprisoned, in case

“no

“ no such security had been given, unless such penalty and charges shall be sooner paid.”

† *Sect. 73.* By 28 Geo. 3. c. 38. s. 69. it is also provided, Appeals from justices may be made to the quarter-sessions, on two sureties entering into recognizances ;

“ That if any person or persons who shall be convicted of any of the offences in this act herein-before mentioned, shall think himself or themselves aggrieved by the judgment or determination of such justices of the peace, upon any complaint or information brought or made before them, it shall and may be lawful to and for any such person or persons to appeal to the next general or quarter sessions of the peace to be held for the county, division, or place in or for which such justice or justices shall have acted, such person or persons giving, and being hereby required to give, within fourteen days then next after such conviction, notice in writing to the informer or informers of such appeal, and shall and do at the time of making such appeal, with two sufficient sureties, enter into recognizances before the same justice or justices of the peace, to appear and prosecute such appeal at the said general or quarter sessions, and abide by the order and determination of the same court, and to pay the costs and charges thereby awarded against such person or persons (if any) ; and every such appeal shall, by the said court of general or quarter sessions, be examined, and the circumstances of the case fully inquired into, and the matter heard and determined ; and in case such judgment, determination, or conviction, so appealed against, shall be affirmed, the party so appealing shall pay unto the informer or informers double costs, to be ascertained by the order of the same court.”

† *Sect. 74.* By 28 Geo. 3. c. 38. s. 70. it is also provided, and if the appellant pay the penalty, or be in prison, without sureties.

“ That in case the person or persons so appealing shall pay the penalty under any such conviction as aforesaid into the hands of the said justices by way of deposit, or shall be committed to prison, such person or persons shall and may appeal to the said general or quarter sessions, on his or their entering (without sureties) into such recognizances as herein-before mentioned, and remaining in prison in the mean time, or depositing such penalty into the hands of the said justices, there to remain until the merits of the said appeal shall be heard and determined.” •

† *Sect. 75.* By 28 Geo. 3. c. 38. s. 71. it is further enacted, Justices may summon witnesses.

“ That every information to be made under this act shall be made upon oath ; and that it shall and may be lawful to and for the justice or justices before whom any complaint or information shall have been so made, to summon before them, at the instance of either party, any person who shall, in their judgment, appear to be a necessary witness for either or any of the said parties upon the said complaint or information, to appear before him or them, at a time and place to be specified in the summons ; and the person so summoned shall appear at the time and place specified, and submit in all things to be examined as a witness in the premises.”

† *Sect.*

Penalty on receiving more than the limited fees.

† Sect. 76. By 28 Geo. 3. c. 38. s. 72. it is further enacted, "That in case any person or persons shall receive or take any greater fees for any sufferance, license, or certificate, or other matter herein directed, than the sum or fee herein for that purpose limited, the person or persons offending therein shall forfeit and pay to the party aggrieved, the sum of five shillings for every one penny which shall be taken over and above the sum hereby allowed to be taken, and so on after that proportion."

Persons prosecuted to give bail.

† Sect. 77. By 28 Geo. 3. c. 38. s. 73. it is further enacted, "That in case any person shall be prosecuted in any of his majesty's courts of record at Westminster for any penalty incurred by this act, a *capias* shall and may issue, the first process specifying the sum of the penalty sued for, and the person or persons so sued shall be obliged to give good and sufficient bail and security, by natural-born subjects or denizens, to the officer serving or executing such process against him or them, to appear in the court out of which such *capias* shall issue, at the day of the return of such writ, to answer such suit or prosecution, and likewise shall, at the time of such appearance, give sufficient bail or security, by such persons as aforesaid, in the said court, to answer and pay the forfeitures and penalties incurred for such offence or offences, in case he or they shall be convicted thereof, or to yield his or their bodies to prison."

Actions to be tried by a jury of freeholders of a different county from that wherein the fact was committed.

† Sect. 78. By 28 Geo. 3. c. 38. s. 74. for the better and more impartial trials of all actions and informations which shall be commenced or prosecuted by virtue of this act, it is further enacted, "That such actions and informations shall be tried in any of his majesty's courts of record, by a jury of good and lawful freeholders, to be summoned out of any other county than that wherein the fact shall be committed."

If persons imprisoned for want of bail refuse to plead to informations, for one term, judgment to be entered against them.

† Sect. 79. By 28 Geo. 3. c. 38. s. 75. it is further enacted, "That if any person or persons shall be in prison for want of sufficient bail for any of the pecuniary penalties herein-before inflicted, and shall refuse to appear or plead to a declaration or information to be delivered to such person or persons, or to the gaoler, or keeper, or turnkey of the prison, at the said prison, for any of the aforesaid penalties, for the space of one term, judgment shall be entered against him by default."

When there have not been made any seizure out of which to reward prosecutors, the commissioners of the revenue to recompense them as herein mentioned.

† Sect. 80. By 28 Geo. 3. c. 38. s. 76. it is further enacted, "That if any person or persons, offender or offenders, shall be convicted for any of the offences specified in this act, and there shall happen to have been no seizure whereby the informer or prosecutor can be rewarded, then, and in such case, it shall and may be lawful for the respective commissioners of the customs, excise, or salt duties, or other his majesty's revenue, and they are hereby respectively required to cause one shilling per pound weight for all such of the said articles for which such offender or offenders shall be convicted, or the sum of forty pounds in case the quantity cannot be known, to be paid by  
" the

“ the receiver-general of the revenue under the management of  
 “ the respective commissioners, out of any public money in his  
 “ hands; and the money paid by any receiver-general, cashier, or  
 “ other officer as aforesaid, shall be accepted of and allowed in  
 “ his account as so much money paid to his majesty, and every  
 “ such officer is and shall be hereby discharged thereof accord-  
 “ ingly; any law, custom, or usage, to the contrary notwith-  
 “ standing.”

† Sect. 81. By 28 Geo. 3. c. 38. s. 77. it is provided, “ That  
 “ no person or persons whatsoever shall at any time hereafter be  
 “ liable to be prosecuted for any offence, act, matter, or thing  
 “ done or committed contrary to this act, unless such prosecution  
 “ shall be commenced within the space of three years next en-  
 “ suing the offence committed.”

Prosecutions to  
 be commenced  
 in three years.

† Sect. 82. By 28 Geo. 3. c. 38. s. 78. it is further enacted,  
 “ That the better to encourage persons to discover the exporters  
 “ of sheep, wool, or other the articles before enumerated, and  
 “ which are hereby prohibited from being exported, the first three  
 “ persons who shall have been aiding, abetting, or assisting in  
 “ carrying out or exporting of sheep, wool, or any of the said  
 “ articles, who shall give information thereof to any justice of the  
 “ peace within this kingdom, whereby the punishment and penal-  
 “ ties appointed by this act may be inflicted and recovered,  
 “ the party or parties so discovering (not being owner or part  
 “ owner of the said sheep, wool, or other the articles as afore-  
 “ said) shall not suffer any of the said penalties or punishments  
 “ herein-before mentioned: provided always, that if any owner  
 “ of any ship or vessel, or any master, commander, or mariner, or  
 “ person aiding or assisting in loading any ship, vessel, or boat,  
 “ knowing of such exportation of sheep, wool, or any of the  
 “ articles before enumerated, and which are hereby prohibited  
 “ from being exported, shall, within three months next after the  
 “ knowledge thereof, or after his return into the kingdom of  
 “ Great Britain, give the first information thereof before any of  
 “ the barons of the court of Exchequer for the time being, or be-  
 “ fore the head-officer of any port where he shall first arrive, or  
 “ before any justice or justices of the peace, upon his or their  
 “ oath, of the number and quantity of the said articles so carried,  
 “ conveyed, and transported, and by whom, where, and in what  
 “ ship or vessel, and shall enter into recognizance to his said  
 “ majesty, his heirs and successors, with two sufficient sureties,  
 “ before any justice of the peace, in the sum of forty pounds  
 “ each, personally to appear and give evidence of the same, then  
 “ such owner and owners, master, commander, mariner and  
 “ mariners, or other person or persons so aiding or assisting  
 “ therein, shall not be liable to any of the penalties or forfeitures  
 “ in this act contained or enacted for the offence aforesaid, but  
 “ shall be, and is and are hereby enabled to recover and receive  
 “ such benefit and advantage as is appointed to be received and  
 “ allowed by this act on conviction of such offenders.”

The first three  
 persons con-  
 cerned in ex-  
 porting sheep,  
 &c. not being  
 the owners,\* who  
 shall inform  
 thereof, to be  
 exempted from  
 penalties;

and also the  
 owner, &c. of  
 the ship, upon  
 the conditions  
 herein men-  
 tioned.

† Sect. 83. By 28 Geo. 3. c. 38. s. 89. it is further enacted,  
 “ That if any person or persons who shall claim the benefit of  
 “ this

In actions  
 brought by per-  
 sons claiming  
 “ this



the benefit of this act against officers, &c. for any thing done in regard to matters hereby discharged, they may plead the general issue.

“ this act, shall, after such claim, bring or commence, or cause to be brought or commenced, any action, plaint, information, or other prosecution whatsoever, against any officer of his majesty’s navy, or in the service of the customs, excise, or salt, or other person who shall have aided or assisted any such officer, for or concerning any act, matter or thing, done or committed by them, or any of them, on occasion of, or for or by reason or means of any of the offences, frauds, misdemeanors, or other matters or things intended to be released and discharged by this act, such claim is and shall be deemed to be an absolute discharge and release to every such officer, or other person, of and from all and every such actions, suits, and prosecutions; and such officer and other person may plead the general issue, and give the special matter in evidence; and the said officer or other person shall recover his costs of suit against the person or persons so bringing or commencing such action or prosecution.”

Act not to extend to the discharge of any seizure of wool, &c. or any prosecution now depending, &c. in respect to such parts of fines as belong to the informer;

† *Sect. 84.* By 28 Geo. 3. c. 38. s. 90. it is provided, “ That nothing in this act contained shall extend, or be construed to extend, to discharge or release any seizures of wool, or any other the said herein-before enumerated articles, or of any ships, vessels, boats, horses, waggons, carts, carriages, or other thing whatsoever, or any prosecution now depending for the forfeiture of such wool, or any other the said herein-before enumerated articles, ships, vessels, boats, horses, waggons, carts, carriages, or other thing, under any act or acts of parliament now in force against the exportation of live sheep, wool, or any other the said herein-before enumerated articles, nor to acquit, release, or discharge any judgment or judgments, where the monies or other things recovered have been actually levied, or the body or bodies of the offender or offenders now in custody, or which have been taken in execution before the making of this act, nor to acquit, release, or discharge any information which has been already entered, or any action or suit which has been already commenced or brought against any person or persons for the recovery of any penalty, fine, or forfeiture, incurred by any offence committed by him or them against any such act or acts of parliament, verdict or verdicts obtained, or judgment or judgments recovered thereon. in respect to such part thereof as belongs to or, has been usually allowed and paid to the officer of his majesty’s navy, or in the service of the customs, excise, or salt. (at whose instance the prosecution is or was carried on,) according to the mode in which such suit or suits hath or have been commenced and carried on; but such information, suit, verdict or verdicts, or judgment or judgments, shall and may be proceeded upon as originally commenced, entered, and proceeded upon, without any alteration in the proceedings upon such information, suit, verdict or verdicts, judgment or judgments, for the recovery in due course of law of such part of the penalty or forfeiture incurred, as belongs to or has been usually allowed and paid to such officer of his majesty’s navy, or in the service of the customs, excise, or salt, at whose instance the prosecution is or was carried on, according “ to

but such suits may be proceeded on.

“ to the mode in which such suit or suits hath or have been  
“ carried on.”

† *Sect. 85.* By 28 Geo. 3. c. 38. s. 91. it is further enacted, Limitation of actions.

“ That in case any action, suit, or information shall be com-  
“ menced, brought, and prosecuted on account of the seizure of  
“ any ship, vessel, or boat, waggon, cart, carriage, horse, or other  
“ beast of burthen, or of any sheep, wool, woolfels, woolflocks,  
“ morthings, shortlings, worsted, bay, or woollen yarn, cruels, or  
“ wool slightly manufactured, or mattresses or beds stuffed with  
“ combed wool, or wool fit for combing or carding, fullers’ earth,  
“ fulling-clay, or tobacco-pipe clay, as illegally carried or ex-  
“ ported, or intended or attempted to be exported, or for any  
“ matter, cause, or thing done, committed, or executed by virtue  
“ of this act, or any clause or article herein contained, such action  
“ shall be commenced within six months after the fact committed,  
“ and not afterwards, and shall be laid in the proper county where  
“ the fact was done or committed; and the person or persons so  
“ sued may file common bail, or enter a common appearance,  
“ and plead the general issue, not guilty, and may give this act, General issue.  
“ and the special matter, in evidence at the trial, and that the  
“ same was done in pursuance and by the authority of this act :  
“ and if upon the trial it shall appear to be so done, the jury shall  
“ find for the defendant or defendants; and in such case, or if  
“ the said plaintiff or plaintiffs, or prosecutors, shall become non-  
“ suit, or suffer discontinuance, or if upon demurrer judgment be  
“ given against the plaintiff, the defendant or defendants in any  
“ such case shall recover treble costs, which he or they shall Treble costs.  
“ sustain by his or their defence to such action or suit; and that  
“ in case any information shall be commenced and brought to  
“ trial on account of any seizure which shall be made under or  
“ by virtue of this act, wherein a verdict shall be found for the  
“ claimer thereof, and it shall appear to the judge or court before  
“ whom the same shall be tried that there was a probable cause  
“ of seizure, the judge or court before whom the said informa-  
“ tion shall be tried, shall certify on the record that there was a  
“ probable cause for the prosecutor making such seizure, in such  
“ case the defendant shall not be entitled to any costs of suit  
“ whatever, nor shall the person or persons who made any such  
“ seizure be liable to any action, indictment, or other suit or pro-  
“ secution, on account thereof; and that in case any action, in-  
“ dictment, or other prosecution, shall be commenced and  
“ brought to trial against any person or persons whatsoever,  
“ which shall be made under or by virtue of this act, wherein a  
“ verdict shall be given against the defendant or defendants, if  
“ the court or judge before whom such action or prosecution  
“ shall be tried shall certify on the said record that there was a  
“ probable cause for such seizure, then the plaintiff, besides the  
“ ship or goods which shall happen to be seized, or the value  
“ thereof, shall not be entitled to above two-pence damages, nor  
“ to any costs of suit, nor shall the defendant in such prosecution  
“ be fined one shilling.”

If in any action for a seizure, a verdict be found for the claimer, he shall not be entitled to costs if there was a probable cause for making it, &c.

Dyer v. Hainsworth, 3 Term Rep. 611.

† *Sect.* 86. It hath been adjudged, that the 28 Geo. 3. c. 38. s. 74. which enacts, "That any information shall be tried by a jury to be summoned out of another county than that where the fact was committed," means that the trial shall be had in another county.

Dyer v. Hainsworth, 3 Term Rep. 611.

† *Sect.* 87. It is also decided, upon the said statute, 28 Geo. 3. c. 38. s. 31. that the court out of which the record issues is to give judgment, and not the court of *nisi prius* where it is tried.

3 Term Rep. 611.

† *Sect.* 88. It is also decided, upon the 28 Geo. 3. c. 38. s. 31. that it is an offence to press together yarn made of wool.

3 Term. Rep. 611.

† *Sect.* 89. It also seems, that a declaration or information on this statute need not aver that the pretended manufacture was in such a state as might be reduced to and used as wool again.

### 3. *Fraudulent Bankruptcy.*

Bankrupts not surrendering within forty-two days' notice,

† *Sect.* 1. By 5 Geo. 2. c. 30. s. 1. it is recited, "That bankrupts have not only refused to surrender themselves to the commissioners, and to discover and deliver up their estate and effects to the said commissioners for the benefit of their creditors, but have carried away and concealed the same in such manner, that the said commissioners have not been able to seize the same, to the manifest wrong and injury of their creditors, and to the great discouragement of trade;" and enacted, "That if any person or persons, who shall become bankrupt, and against whom a commission of bankrupt under the great seal of Great Britain hath been awarded and issued out, whereupon the person or persons against whom such commission hath issued or shall issue, have or hath been or shall be declared bankrupt or bankrupts, shall not within forty-two days after notice thereof in writing, to be left at the usual place of abode, to such person or persons, or personal notice, in case such person or persons be then in prison, and notice given in the London Gazette, that such commission or commissions is, are, or have been issued, and of the time and place of a meeting of the commissioners therein named, or the major part of them, surrender him, her, or themselves to the said commissioners named in the said commission, or the major part of them, and sign or subscribe such surrender, and submit to be examined from time to time upon oath, or, being of the people called quakers, upon the solemn affirmation by law appointed for such people, by and before such commissioners, or the major part of them, by such commission authorized, and in all things conform to the several statutes already made and now in force concerning bankrupts; and also upon such his, her, or their examination fully and truly disclose and discover all his, her, or their effects and estate real and personal, and how and in what manner, to whom and upon what consideration, and at what time or times, he, she, or they have or hath disposed of, assigned or transferred any of his, her, or their goods, wares, merchandizes, monies, or other estate and effects (and all books, papers, and writings relating thereunto) of which he, she, or they was or were

conforming to the statutes,

"were possessed, or in or to which he, she, or they was or  
 "were any ways interested or intitled, or which any person or  
 "persons had, or hath or have had in trust for him, her, or them,  
 "or for his, her or their use, at any time before or after the  
 "issuing of the said commission, or whereby such person or per-  
 "sons, or his, her, or their family or families, hath or have, or  
 "may have or expect any profit, possibility of profit, benefit or  
 "advantage whatsoever, except only such part of his, her, or their  
 "estate and effects as shall have been really and *bona fide* before  
 "sold or disposed of in the way of his, her, or their trade and  
 "dealings; and except such sums of money as shall have been  
 "laid out in the ordinary expense of his, her, or their family or  
 "families; and also upon such examination deliver up unto the  
 "said commissioners by the said commission authorized, or the  
 "major part of them, all such part of his, her, or their the said  
 "bankrupt's goods, wares, merchandizes, money, estate, and  
 "effects, and all books, papers, and writings, relating thereunto,  
 "as at the time of such examination shall be in his, her, or their  
 "possession, custody, or power (his, her, or their necessary wear-  
 "ing apparel, and the necessary wearing apparel of the wife and  
 "children of such bankrupt only excepted); then he, she, or  
 "they, the said bankrupt or bankrupts, in case of any default and  
 "wilful omission in not surrendering and submitting to be examined  
 "as aforesaid, or in case he, she, or they shall remove, conceal,  
 "or embezzle any part of such his, her, or their estate real or  
 "personal, to the value of twenty pounds, or any books of account,  
 "papers or writings relating thereto, with an intent to defraud  
 "his, her, or their creditors (and being thereof lawfully convicted  
 "by indictment (1) or information), shall be deemed and adjudged  
 "to be guilty of felony, and shall suffer as felons, without benefit  
 "of clergy, (2) or the benefit of any statute made in relation to  
 "felons; and in such cases such felon's goods and estate shall go  
 "and be divided among the creditors seeking relief under such  
 "commission; any law, usage, or custom to the contrary thereof  
 "in anywise notwithstanding."

or embezzling  
 goods to the  
 value of 20*l*.  
 guilty of felony.

Goods of bank-  
 rupts con-  
 demned to go to  
 the creditors.

† Sect. 2. By 5 Geo. 2. c. 30. s. 2. it is provided, "That the  
 "said commissioners, authorized as aforesaid, shall appoint,  
 "within the said forty-two days so appointed as aforesaid for  
 "the bankrupt to surrender and conform as aforesaid, not less  
 "than three several meetings for the purposes aforesaid, the last  
 "of which shall be on the forty-second day hereby limited for  
 "such bankrupt's appearance; except on commissions already  
 "issued since the fourteenth day of May, one thousand seven  
 "hundred and twenty-nine, where the person or persons against  
 "whom such commission issued has or have before surrendered  
 "and submitted to be examined; in which case the said com-  
 "missioners

Number and  
 limitation of  
 sittings.

(1) This word was printed "judgment" in most of the editions of the Statutes, but upon reference to the Parliamentary Roll it was found to be properly "indictment."—1 Taunton, 71.

(2) By stat. 1 Geo. 4. c. 115. s. 1. so much of 5 Geo. 2. as inflicts the punishment of death is repealed, and by sect. 2. it is enacted, "That the  
 "persons guilty of the above offence shall be liable

"to be transported beyond the seas for life, or for  
 "such term, not less than seven years, as the court  
 "before which such persons shall be convicted  
 "shall adjudge; or shall be liable, in case the said  
 "court shall think fit, to be imprisoned only, or im-  
 "prisoned and kept to hard labour in the common  
 "gaol, penitentiary house, or house of correction,  
 "for any term not exceeding seven years."

“missioners, authorized as aforesaid, shall appoint only one sitting more for the purposes aforesaid, unless the assignee or assignees of the estate of such bankrupt shall think more sittings necessary, and desire the same, and three weeks’ notice at least shall be given in the London Gazette of the time and place of such meetings.”

Lord Chancellor may enlarge the time for surrendering.

† *Sect. 3.* By 5 Geo. 2. c. 30. s. 3. it is also provided, “That it shall and may be lawful to and for the lord chancellor or lord keeper, or commissioners for the custody of the great seal of Great Britain for the time being, to enlarge the time for such person or persons surrendering him, her, or themselves, and disclosing and discovering his, her, or their estate and effects as aforesaid, as the said lord chancellor, lord keeper, or such commissioners shall think fit, not exceeding fifty days, to be computed from the end of the said forty-two days, so as such order for enlarging the time be made by the said lord chancellor, lord keeper, or such commissioners, six days at least before the time on which such person or persons was or were so to surrender him, her, or themselves, and make such discovery as aforesaid.”

1 Peer Wms. 610.

† *Sect. 4.* It seems to be clearly agreed, that a bankrupt’s wife cannot be examined on the part of the prosecution on an indictment for this offence.

*Ex parte Lingard*,  
1 Atk. 240.

† *Sect. 5.* It seems also, that if, between the opening of the commission and the time appointed for the bankrupt’s surrender, the commissioners, on the examination of witnesses, have reason to believe that he is secreting his effects, they may, after his refusal to attend their summons to surrender, immediately certify the fact to a judge of the King’s Bench, who may grant his warrant for apprehending the bankrupt, and committing him to Newgate.

5 Mod. 309.

† *Sect. 6.* It is clear, however, that a bankrupt examined before the commissioners is not bound to answer any thing which tends to accuse himself.

Cooke, B. L.  
1 Salk. 348.  
2 Bl. Rep. 1144.  
2 Stra. 880.

† *Sect. 7.* It is agreed, that the court of Chancery will not lend its aid to a prosecution on this statute, by ordering the clerk under the commission to attend the trial and produce the proceedings.

#### 4. Of *Fraudulent Insolvency.*

Creditor may compel a prisoner to deliver in a schedule of his estate and effects.

By 28 Geo. 2. c. 13. s. 39. it is recited, “That several persons who are prisoners for debt choose rather to continue in prison, and spend their substance there, than discover and deliver up to their creditors their estates or effects, in order to the satisfaction of their just debts:” and therefore enacted, “That it shall and may be lawful to or for any one or more of the creditors of any prisoner, upon twenty days’ notice in writing to be given to such prisoner, and the person in whose custody he or she is, to require the sheriff or sheriffs, gaoler or gaolers, or keeper of the prison wherein such prisoner is detained, to bring such prisoner before the justices, at their next general or quarter-sessions

“quarter-sessions of the peace, or any adjournment thereof, for the respective county, riding, division, city, town, or liberty, together with a copy or copies of the cause or causes of his or her detainer; and such prisoner, coming before such justices, at their said general or quarter-sessions held as aforesaid, shall, at the desire of any one or more of his or her creditors, at whose suit he or she appears to be detained, be obliged to deliver in upon oath, and subscribe the like schedule of his or her estate or effects, to be vested, assigned, and equally divided, for the benefit of his or her creditors, in like manner as persons desiring to take the benefit of this act are required to do, subject to the same penalty of being adjudged a felon, and suffering as such, without benefit of clergy, on conviction of wilful perjury therein, as the said other prisoners are hereby subjected to; and shall, upon such discovery, to the satisfaction of the said justices, in their said general or quarter-sessions held as aforesaid, or the major part of them, be discharged and set at liberty, in the same manner, and with the same benefit of making use of their discharge, as is hereby provided for prisoners seeking their discharge under this act; and if any such prisoners, so brought up as aforesaid, shall neglect or refuse to deliver in and subscribe such schedule within four days, he, she, or they so neglecting or refusing, shall, upon conviction thereof, be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.”

Prisoner making discovery to be discharged.

On refusal to make the same, to suffer as a felon.

And by the insolvent act of the 1 Geo. 4. c. 119. by which a prisoner seeking to obtain his release from prison under the provisions of that act, is directed to make out a schedule of all his property, it is enacted by s. 23. “If any prisoner shall, with intent to defraud his creditors, wilfully and fraudulently omit in his schedule, as finally amended and filed in the said court at the time of the order for his discharge from actual custody, any effects or property whatsoever, or retain or except out of the schedule, as wearing apparel, bedding, working tools, and other necessaries, more in value than twenty pounds, every such person so offending, and any person aiding and assisting him to do the same, shall, upon being thereof convicted by due course of law, be adjudged guilty of a misdemeanour, and thereupon it shall and may be lawful for the court before whom any such offender shall have been so tried and convicted, to sentence such offender to be imprisoned and kept to hard labour for any period of time not exceeding three years.”

### 5. *Seducing Artificers.*

Sect. 1. By 5 Geo. 1. c. 27. s. 1. it is recited, that “Whereas divers ill-disposed persons, as well foreigners as subjects of this kingdom, by confederacy with foreigners, have of late drawn away and transported, and have also made divers attempts to entice, draw away, and transport, several artificers and manufacturers of and in wool, iron, steel, brass and other metals, clockmakers, watchmakers, and divers other manufacturers of Great Britain, out of his majesty’s dominions into foreign countries, by entering into contracts with them to give them greater wages and advan-

Persons convicted of contracting with, or enticing, &c. any artificer to go into a foreign country, shall be fined not exceeding £100 for the first offence, and be imprisoned for three months;

tages

tages than they have or can reasonably expect within this kingdom, and by making them large promises, and using other arts to inveigle and draw them away: and whereas there is great danger that, by means of these and such like practices, many great and profitable branches of the trades and manufactures of this kingdom may be transplanted into foreign countries:" therefore, for the preventing the like practices for the future, be it enacted, " That if at any time hereafter any person or persons " shall contract with, entice, endeavour ~~to~~ persuade or solicit, " any manufacturer or artificer of or in wool, iron, steel, brass, or " any other metal, clockmaker, watchmaker, or any other artificer " or manufacturer of Great Britain, to go out of this kingdom " into any foreign country out of his majesty's dominions, and " shall be lawfully convicted thereof upon any indictment or in- " formation which shall be preferred or brought against him or " them in any of his majesty's courts at Westminster, or at the " assizes or general gaol-delivery or quarter-sessions of the peace " for the county, riding, or division, where such offence shall be " committed, the person and persons so convict shall be fined any " sum not exceeding one hundred pounds for such first offence, " according to the discretion of the court in which such convic- " tion shall be, and shall be imprisoned for the space of three " months, and until such fine shall be paid: and if any person or " persons, having been once convict as aforesaid, shall offend " again, and be so convict a second time of the like offence, then " and in such case the person so convict a second time shall be " fined at the discretion of the court where such conviction shall " be, and be imprisoned for twelve months, and until such fine " shall be paid."

And for the se-  
cond offence  
shall be fined  
discretionally,  
and imprisoned  
for twelve  
months.

Prosecution in  
twelve months  
after the of-  
fence.

*Sect. 2.* By 5 Geo. 1. c. 27. s. 2. it is " Provided neverthe-  
less, that no person or persons shall be prosecuted for any of  
" the offences aforesaid, unless such prosecution shall be begun  
" within the space of twelve months next after such offence shall  
" be committed."

After May 1,  
1719, any arti-  
ficer going into  
a foreign  
country, there  
to exercise his  
trade, and not  
returning in six  
months after  
warning given  
him by the am-  
bassador, &c.,  
shall be incapa-  
ble of taking  
any legacy, &c.

*Sect. 3.* By 5 Geo. 1. c. 27. s. 3. it is further enacted, " That  
" if any of his majesty's subjects within this kingdom, being such  
" artificer or manufacturer as aforesaid, shall, at any time after  
" the first day of May, 1719, go into any country out of his  
" majesty's dominions, there to use or exercise, or to teach, any  
" of the said trades or manufactures to foreigners, or in case any  
" of his majesty's subjects now being, or who hereafter shall be,  
" in any such foreign country out of his majesty's dominions as  
" aforesaid, and there using or exercising any of the said trades  
" or manufactures herein-before mentioned, shall not return into  
" this realm within six months next after warning shall be given  
" to him by the ambassador, envoy, resident, minister, or consul  
" of the crown of Great Britain in the country in which such  
" artificer shall be, or by any person authorized by such ambas-  
" sador, envoy, resident, minister, or consul, or by one of his  
" majesty's secretaries of state for the time being, and from  
" thenceforth continually inhabit and dwell within this realm;  
" then and in such case every such person or persons shall be  
" from thenceforth incapable of taking any legacy that shall be  
" devised

“ devised to him within this kingdom, or of being an executor or administrator to any person or persons within this kingdom; and shall be incapable of taking any lands, tenements, or hereditaments, within this kingdom, by descent, devise, or purchase; and also forfeit all his lands, tenements, and hereditaments, goods, and chattels within this kingdom, to his majesty’s use; and shall from thenceforth be, and be deemed and taken to be, an alien, and shall be out of his majesty’s protection.”

Forfeit all his lands, &c. and be deemed an alien.

*Sect. 4.* By 5 Geo. 1. c. 27. s. 4. it is further enacted, “ That from and after the said first day of May, 1719, upon complaint made upon oath before any justice or justices of the peace, that any person or persons is or are endeavouring to seduce or draw away any such manufacturer or artificer as aforesaid out of his majesty’s dominions, for any the purposes aforesaid, or that any such manufacturer or artificer as aforesaid hath contracted, promised, or is preparing, to go out of his majesty’s dominions for any of the purposes aforesaid, then and in such case it shall and may be lawful to and for the justice or justices of the peace unto whom such complaint shall be made, to send forth his warrant to bring the person and persons so complained of before him or them, or some other of his majesty’s justices of the peace for the same county, riding, division, or city: and if, when such person or persons shall be so brought before such justice or justices, it shall appear to such justice or justices, by the oath or oaths of one or more credible witness or witnesses, or by the confession of the party or parties so brought before him or them, that the party so complained of was guilty of any of the said offences, then and in such case it shall and may be lawful to and for such justice and justices to bind the person so charged to appear at the next assizes, general gaol-delivery, or quarter-sessions of the peace, for the county, city, riding, or division, where such offence shall be committed, to answer the premises, with reasonable sureties for such his appearance; and in case such person or persons shall refuse or neglect to give such security, then and in such case it shall and may be lawful to and for such justice and justices to commit the person or persons so refusing to the county gaol, there to be kept until the next assizes or next quarter-sessions of the county, city, riding, or division, where such commitment shall be, at the election of such justice of the peace, and until he, she, or they, shall be delivered by due course of law; and in case any such artificer or manufacturer shall be convict, upon any indictment to be preferred against him at such assizes or general gaol-delivery, or quarter-sessions of the peace, as aforesaid, of any such promise or contract, or preparation to go abroad beyond the seas, for any of the purposes aforesaid, then and in such case the person so convict shall give such security to his majesty, his heirs, and successors, not to depart out of his majesty’s dominions for any of the purposes aforesaid, as such court shall think reasonable, and shall be imprisoned until such security shall be given.”

Justices of peace may, on complaint of any offence against this act, issue their warrant for the apprehending of the offender, and bind him to appear at the assizes, &c.

Persons refusing to give such security may be committed.

Persons convicted shall give security not to depart the kingdom, or be imprisoned till such security given.

*Sect. 5.* And by 5 Geo. 1. c. 27. s. 5. “ If any of the above-mentioned offences shall be committed in that part of Great Britain

Offenders in Scotland to be



prosecuted in  
the court of jus-  
ticiary or cir-  
cuits there.

Rex v. Metcalf,  
4 Burr. 2026.

Persons con-  
victed of se-  
ducing artificers,

to forfeit £500,  
and be impris-  
oned for two  
months.

Second offence,  
to forfeit  
£1000,

and be impris-  
oned for two  
years.

"Britain called Scotland, the same shall be prosecuted in the  
"court of justiciary or the circuits there."

Sect. 6. It is said to have been decided on this statute, that if  
a defendant be convicted on one information for having seduced  
four different artificers, yet the court can only inflict one penalty.

† Sect. 7. By 23 Geo. 2. c. 13. it is further enacted, "That  
"if any person or persons shall contract with, entice, persuade,  
"or endeavour to persuade, solicit, or seduce, any manufacturer,  
"workman, or artificer of or in wool, mohair, cotton, or silk, or  
"of or in any manufactures made up of wool, mohair, cotton, or  
"silk, or any of the said materials mixed one with another, or of  
"or in iron, steel, brass, or any other metal, or any clockmaker,  
"watchmaker, or any other manufacturer, workman, or artificer  
"of or in any other of the manufactures of Great Britain or Ire-  
"land, of what nature or kind soever, to go out of this kingdom,  
"or out of the kingdom of Ireland, into any foreign country, not  
"within the dominions of or belonging to the crown of Great  
"Britain; and shall be lawfully convicted thereof, upon any in-  
"dictment or information to be preferred or brought against him,  
"her, or them, in his majesty's court of king's bench at West-  
"minster, or by indictment at the assizes or general gaol-delivery  
"for the county, riding, or division, wherein such offence shall  
"be committed (if such offence shall be committed in that part  
"of Great Britain called England), or by indictment in the court  
"of justiciary or any of the circuit courts in Scotland (if such  
"offence shall be committed in that part of Great Britain called  
"Scotland), or by indictment or information in his majesty's  
"court of king's bench at Dublin (if such offence shall be  
"committed in Ireland), the person or persons so convicted  
"shall, for every artificer, workman, or manufacturer, so by him,  
"her, or them respectively contracted with, enticed, persuaded,  
"solicited, or seduced, severally forfeit the sum of five hundred  
"pounds of lawful money of Great Britain; and shall also suffer  
"imprisonment in the common gaol of the county, riding, divi-  
"sion, shire, or stewartry, wherein such offender or offenders  
"shall be respectively convicted, for the space of twelve calendar  
"months, without bail or mainprise, and until such forfeiture  
"shall be paid: and in case of a further conviction, in manner  
"before prescribed by this act, for or upon a second or other  
"subsequent offence of the same kind, the person or persons so  
"again offending shall, upon every second or other subsequent  
"conviction, severally forfeit for every person so by him, her,  
"or them respectively contracted with, enticed, persuaded, soli-  
"cited, or seduced, the sum of one thousand pounds of lawful  
"money of Great Britain; and shall also suffer imprisonment in  
"the common gaol of the county, riding, division, shire, or  
"stewartry, wherein such offender or offenders shall be respec-  
"tively convicted, for the space of two years, without bail or  
"mainprise, and until such forfeiture shall be paid."

† Sect. 8. By 23 Geo. 2. c. 13. s. 2. it is provided, "That no  
"person shall be prosecuted for any of the offences aforesaid,  
"unless such prosecution shall be commenced within the space  
"of

"of twelve calendar months next after such offence shall be committed."

† Sect. 9. It is said, that this latter statute, being upon the same subject with the former, virtually repeals the higher degree of punishment on persons whose offences are within both the statutes. Rex v. Cater, 4 Burr. 2026.

† Sect. 10. It is also said, that this latter statute leaves no discretion in the court with respect to the penalty, but that the punishment directed by it is peremptory. Per Aston, Justice, 4 Burr. 2026.

† Sect. 11. By 22 Geo. 3. c. 60. it is enacted, "That if any person or persons shall contract with, entice, persuade, or endeavour to seduce or encourage, any artificer or workman concerned or employed, or who shall have worked at, or been employed in, printing calicoes, cottons, muslins, or linens, of any sort, or in making or preparing any blocks, plates, engines, tools, or utensils, for such manufactory, to go out of Great Britain to any parts beyond the seas, and shall be convicted thereof, upon indictment or information in the court of King's Bench at Westminster, or by indictment at the assizes or general gaol-delivery for the county or place wherein such offence shall be committed, or the offender or offenders shall live or reside, or by indictment in the court of judicature or any of the circuit courts in Scotland, as the case may be; every person so convicted shall, for every artificer so contracted with, enticed, persuaded, encouraged, or seduced, or attempted so to be, forfeit and pay the sum of five hundred pounds of lawful money of Great Britain, and shall be committed to the common gaol for the county, place, or stewartry, wherein the offender or offenders shall be convicted, there to remain, without bail or mainprise, for the space of twelve calendar months, and until such forfeiture shall be paid; and in case of a subsequent offence of the same kind, the person or persons so again offending shall, upon the like conviction, forfeit and pay, for every person so contracted with, enticed, persuaded, and encouraged, or seduced, or attempted so to be, the sum of one thousand pounds of lawful money of Great Britain, and shall be committed to the common gaol as aforesaid, there to remain, without bail or mainprise, for and during the term of two years, and until such forfeiture shall be paid." Penalty on enticing workmen employed in printing calicoes, cottons, &c.

Sect. 12. By 22 Geo. 3. c. 60. s. 2. it is provided, "That no person shall be prosecuted for any of the offences aforesaid, unless such prosecution shall be commenced within the space of twelve calendar months next after such offence shall be committed." Prosecution in twelve months.

Sect. 13. By 22 Geo. 3. c. 60. s. 7. it is further enacted, "That the moiety of the respective forfeitures by this act inflicted on offenders against the same, shall, when recovered, go and be applied to the use of his majesty, his heirs and successors; and the other moiety to the use of the person or persons who shall sue and prosecute for the same respectively." Forfeitures.

Limitation of actions.

General issue.

Treble costs.

Penalty on persons enticing artificers in the iron or steel manufactures, &c. to leave this kingdom (except to Ireland.)

For first offence, 500*l.* and twelve months imprisonment ;

Second, &c. 1000*l.* and two years imprisonment.

Prosecution to be commenced within twelve months.

Penalties and forfeitures how to be recovered and applied.

*Sect. 14.* And by 22 Geo. 3. c. 60. s. 8. " If any action or suit shall be commenced against any person for what he shall do in pursuance of this, such action or suit shall be commenced within six calendar months next after the fact committed; and the person so sued shall and may file common bail, and enter a common appearance, and plead the general issue not guilty, and may give this act and the special matter in evidence; and if the plaintiff or prosecutor shall become nonsuit, or suffer discontinuance, or if a verdict shall pass against him, or if, upon demurrer, judgment shall be given against him, then, and in any of the cases aforesaid, the defendant shall recover treble costs."

*Sect. 15.* By 25 Geo. 3. c. 67. s. 6. it is enacted, " That if any person or persons shall contract with, entice, persuade, or endeavour to seduce or encourage, any artificer or workman concerned or employed, or who shall have worked at or been employed, in the iron or steel manufactures in this kingdom, or in making or preparing any tools or utensils for such manufactory, to go out of Great Britain to any parts beyond the seas (except to Ireland), and shall be convicted thereof, upon indictment or information in the court of king's bench at Westminster, or by indictment at the assizes, or general gaol-delivery, or quarter-sessions, for the county or place wherein such offence shall be committed, or the offender or offenders shall live or reside, or by indictment in the court of judicary or any of the circuit courts of Scotland, as the case may be; every person so convicted shall, for every artificer so contracted with, enticed, persuaded, encouraged, or seduced, or attempted so to be, forfeit and pay the sum of five hundred pounds of lawful money of Great Britain, and shall be committed to the common gaol for the county, place, or stewartry, wherein the offender or offenders shall be convicted, there to remain, without bail or mainprize, for the space of twelve calendar months, and until such forfeiture shall be paid: and in case of a subsequent offence of the same kind, the person or persons so again offending shall, upon the like conviction, forfeit and pay, for every person so contracted with, enticed, persuaded, encouraged, or seduced, or attempted so to be, the sum of one thousand pounds of lawful money of Great Britain, and shall be committed to the common gaol as aforesaid, there to remain, without bail or mainprize, for and during the term of two years, and until such forfeitures shall be paid."

*Sect. 16.* By 25 Geo. 3. c. 67. s. 7. it is provided, " That no person shall be prosecuted for any of the offences aforesaid, unless such prosecution shall be commenced within the space of twelve calendar months next after such offence shall be committed."

*Sect. 17.* By 25 Geo. 3. c. 67. s. 8. it is further enacted, " That the several penalties and forfeitures herein-before mentioned shall and may be sued for and recovered by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster, or in the court of exchequer, or in the court of session in Scotland, in the name of his Majesty's attorney-

“attorney-general or lord advocate, or in the name of some officers of the customs in Great Britain respectively, wherein no essoin, protection, privilege, wager of law, or more than one imparlance shall be allowed; and that one moiety of the said penalties and forfeitures shall go and be applied to the use of his Majesty, his heirs and successors, and the other moiety to the use of such officer or officers of the customs as shall sue and prosecute for the same respectively, after deducting the charges of prosecution from the whole.”

*Sect. 18.* And by 25 Geo. 3. c. 67. s. 9. “If any suit or action shall be commenced against any person for what he shall do in pursuance of this act, such suit or action shall be commenced within three months next after the fact committed; and the person so sued may file common bail, or enter a common appearance, and plead the general issue, not guilty, and may give this act and the special matter in evidence; and if the plaintiff or prosecutor shall become nonsuit, or suffer discontinuance, or if a verdict pass against him or her, or if, upon demurrer, judgment shall be given against the plaintiff, the defendant shall recover treble costs.”

Limitation of actions.

General issue.

Treble costs.

### *Exporting Tools.*

*Sect. 1.* By 23 Geo. 2. c. 13. s. 3. it is recited, “That the exportation of the several tools or utensils made use of in preparing, working up, and finishing the woollen and silk manufactures, or any or either of them, will enable foreigners to work up such manufactures, and thereby greatly diminish the exportation of the same from this kingdom; therefore, for preserving as much as possible to his Majesty’s British subjects the benefits arising from those great and valuable branches of trade and commerce, be it enacted, That from and after the twenty-fourth day of June, 1750, if any person or persons in Great Britain or Ireland shall, upon any pretence whatsoever, load or put on board, or cause to be laden or put on board, of any ship, vessel, or boat, which shall not be bound directly to some port or place in Great Britain, or Ireland, or to some other of the dominions of the crown of Great Britain, any such tools or utensils as are commonly used in, or are proper for preparing, working up, or finishing of the woollen or silk manufactures, or any or either of them, or any parts or parcels of such tools or utensils, by what name or names such tools or utensils shall or may be called or known, the person or persons so offending shall, for every such offence, not only forfeit and lose all such tools and utensils, or parts or parcels thereof, which shall be so laden or put on board as aforesaid, but also the sum of two hundred pounds of lawful money of Great Britain, to be recovered by action of debt, bill, plaint, or information, in any of his Majesty’s courts of record at Westminster, or in the court of session in Scotland, or in any of the four courts at Dublin respectively, wherein no essoin, protection, privilege, or wager of law, shall be allowed, or more than one imparlance.”

Persons exporting utensils of the woollen and silk manufactures,

shall forfeit the tools and 200*l.*

*Sect. 2.* By 23 Geo. 2. c. 13. s. 4. “It shall and may be lawful to and for any officer of his Majesty’s customs in Great Britain,

Officers of the customs empowered to seize tools found

on board ships  
bound to  
foreign parts ;

to be sold after  
condemnation.

Captains of  
vessels per-  
mitting such  
utensils to be  
put on board,  
to forfeit 100*l*.

Captains of his  
Majesty's ships  
to forfeit 100*l*.  
and to be  
cashiered.

Officer of the  
custom-house,  
signing cockets,  
&c. for the  
exporting such  
tools,

forfeit 100*l*.  
and his employ-  
ment.

One moiety to  
the king, the  
other to the pro-  
secutor.

" Britain, and for any officer of the revenue in Ireland, to seize  
" and secure in some of his Majesty's warehouses all such tools  
" or utensils by this act prohibited to be exported as such officer  
" shall find or discover to be laid or put on board of any ship, ves-  
" sel, or boat, which shall not be bound directly to some port or  
" place in Great Britain or Ireland, or to some other of the do-  
" minions of the crown of Great Britain, and every officer who  
" shall seize and secure any of the said tools or utensils shall be  
" fully and absolutely indemnified for so doing ; and all tools or  
" utensils so seized and secured as aforesaid shall, after con-  
" demnation thereof in due course of law, be publicly sold to the  
" best bidder, and one moiety of the produce arising by the sale  
" of such tools and utensils shall be to the use of his Majesty,  
" his heirs and successors, and the other moiety to the officer  
" who shall seize and secure the same as aforesaid."

*Sect. 3.* By 23 Geo. 2. c. 13. s. 5. " If the captain or master  
" of any ship, vessel, or boat, in Great Britain or Ireland, shall  
" knowingly permit any of the said tools or utensils by this act  
" prohibited to be exported as aforesaid, to be put on board his  
" said ship, vessel, or boat, every such captain or master shall, for  
" every such offence, forfeit the sum of one hundred pounds of  
" lawful money of Great Britain, to be sued for and recovered  
" in the same manner as the penalties by this act inflicted upon  
" persons exporting the said tools or utensils are to be sued for  
" and recovered ; and if the said ship, vessel, or boat, belongs to  
" his Majesty, his heirs or successors, then the captain or master  
" thereof shall not only forfeit the sum of one hundred pounds  
" of lawful money of Great Britain, to be sued for and recovered  
" as aforesaid, but shall also forfeit his employment, and be in-  
" capable of any office or employment under his majesty, his  
" heirs or successors."

*Sect. 4.* By 23 Geo. 2. c. 13. s. 6. " If any customer, comp-  
" troller, surveyor, searcher, waiter, or other officer of the cus-  
" toms in Great Britain, or any officer of the revenue in Ireland,  
" shall take, or knowingly or willingly suffer to be taken, any  
" entry outward, or shall sign any cocket, warrant, or sufferance,  
" for the shipping or exporting of any of the said tools or utensils  
" by this act prohibited to be exported, or shall knowingly or  
" willingly permit or suffer the same to be done, directly or indi-  
" rectly, contrary to the true intent and meaning of this act,  
" every such customer, comptroller, surveyor, searcher, waiter,  
" or other officer of the customs in Great Britain, or officer of the  
" revenue in Ireland, so offending, shall forfeit the sum of one  
" hundred pounds of lawful money of Great Britain, to be sued  
" for and recovered as aforesaid ; and shall also forfeit his office,  
" and be incapable of any office or employment under his Majesty,  
" his heirs or successors."

† *Sect. 5.* By 23 Geo. 2. c. 13. s. 7. " One moiety of the  
" respective forfeitures by this act inflicted upon offenders  
" against the same, shall, when recovered, go and be applied to  
" the use of his majesty, his heirs and successors, and the other  
" moiety to the use of the person or persons who shall sue and  
" prosecute for the same respectively."

† *Sect.*

† Sect. 6. And by 23 Geo. 2. c. 13. s. 8. "If any suit or action shall be commenced against any person for what he shall do in pursuance of this act, such action shall be commenced within six months after the fact committed; and the person so sued may file common bail, or enter a common appearance, and plead the general issue not guilty, and may give this act and the special matter in evidence; and if the plaintiff or prosecutor shall become nonsuit, or suffer discontinuance, or if a verdict pass against him, or if, upon demurrer, judgment be given against him, the defendant shall recover treble costs."

Limitation of actions.

General issue.

Treble costs.

† Sect. 7. By 14 Geo. 3. c. 71. it is recited, "That the exportation of the several tools or utensils made use of in preparing, working up, and finishing the cotton and linen manufactures of this kingdom, or any or either of them, or any other goods wherein cotton and linen, or either of them, are used, will enable foreigners to work up such manufactures, and thereby greatly diminish the exportation of the same from this kingdom: therefore it is enacted, That if at any time after the first day of July, 1774, any person or persons in Great Britain or Ireland shall, upon any pretence whatsoever, load or put on board, or cause to be laden or put on board, of any ship, vessel, or boat, which shall not be bound directly to some port or place in Great Britain or Ireland, any such tools or utensils as are commonly used in, or are proper for the preparing, working up, or finishing, of the cotton or linen manufactures, or any or either of them, or any other goods wherein cotton and linen, or either of them, are used, or any parts or parcels of such tools or utensils, by what name or names the same shall or may be called or known; the person or persons so offending shall, for every such offence, not only forfeit and lose all such tools and utensils, or parts or parcels thereof, which shall be so laden or put on board as aforesaid, but also the sum of two hundred pounds of lawful money of Great Britain, to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, or in the court of session in Scotland, or in any of the four courts of Dublin respectively, wherein no essoin, protection, privilege, or wager of law, shall be allowed, or more than one imparlance."

Persons shipping tools used in the cotton or linen manufactures, in order to export the same,

to forfeit all such tools, &c. and 200*l*.

† Sect. 8. By 14 Geo. 3. c. 71. s. 2. It shall and may be lawful to and for any officer of his majesty's customs in Great Britain, and for any officer of the revenue in Ireland, to seize and secure, in some or one of his majesty's warehouses, all such tools or utensils, or parts or parcels thereof, by this act prohibited to be exported, as such officer shall find or discover to be laid or put on board of any ship, vessel, or boat, which shall not be bound directly to some port or place in Great Britain or Ireland, and that every officer who shall seize and secure any of the said tools or utensils, or parts or parcels thereof, shall be fully and absolutely indemnified for so doing; and all tools and utensils, or parts or parcels thereof, so seized and secured as aforesaid, shall, after condemnation thereof in due course of law, be publicly sold to the best bidder, and one moiety of the produce

Officers to seize all tools, &c.

which may be publicly sold, &c.

"produce arising by the sale of such tools and utensils shall be to the use of his majesty, his heirs and successors, and the other moiety to the officer who shall seize and secure the same as aforesaid."

Master permitting such tools to be exported, forfeits 200*l*.

† *Sect. 9.* By 14 Geo. 3. c. 71. s. 3. "If the captain or master of any ship, vessel, or boat, in Great Britain or Ireland, shall knowingly permit any tools or utensils, by this act prohibited to be exported as aforesaid, to be put on board his said ship, vessel, or boat, every such captain or master shall, for every such offence, forfeit the sum of two hundred pounds of lawful money of Great Britain, to be sued for and recovered in such manner as the penalties by this act upon persons exporting the said tools and utensils are to be sued for and recovered; and if the said ship, vessel, or boat, belongs to his majesty, his heirs or successors, then the captain or master thereof shall not only forfeit the sum of two hundred pounds, to be sued for and recovered as aforesaid, but shall also forfeit his employment, and be incapable of any office or employment under his majesty, his heirs or successors."

and captain forfeits 200*l*, and his commission.

Officer allowing an entry of such prohibited utensils, to forfeit 200*l*, and his office.

† *Sect. 10.* By 14 Geo. 3. c. 71. s. 4. "If any customer, comptroller, surveyor, searcher, waiter, or other officer of the customs in Great Britain, or any officer of the revenue in Ireland, shall take, or knowingly or willingly suffer to be taken, any entry outward, or shall sign any cocket, warrant, or sufferance, for the shipping or exporting of any of the said tools or utensils by this act prohibited to be exported, or shall knowingly or willingly permit or suffer the same to be done, directly or indirectly, contrary to the true intent and meaning of this act, every such customer, comptroller, surveyor, searcher, waiter, or other officer of the customs of Great Britain, or officer of the revenue in Ireland, shall, for every such offence, forfeit the sum of two hundred pounds of lawful money of Great Britain, to be sued for and recovered as aforesaid, and shall also forfeit his office, and be incapable of holding any office or employment under his majesty, his heirs and successors."

Any person collecting such tools in order to export the same. (Rep. so far as relates to wool-cards to America, by 15 Geo. 3. c. 5.)

† *Sect. 11.* By 14 Geo. 3. c. 71. s. 5. "If any person or persons shall collect, obtain, or have, in his, her, or their custody or possession, any such tools or implements as aforesaid, or any tools or implements used in the woollen or silk manufactures of this kingdom, or any parts or parcels thereof, and complaint shall be made upon the oath of one or more credible witness or witnesses, before any justice or justices of the peace, that there is reason to believe such person or persons have or hath collected, obtained, or got into his, her, or their custody or possession, such tools or implements as aforesaid, or parts or parcels thereof, with intent to export the same to some other port or place than Great Britain or Ireland; then, and in such case, it shall and may be lawful to and for the justice or justices of the peace unto whom such complaint shall be made, to issue his warrant or warrants, not only to seize all such tools or implements, and parts or parcels thereof, but also to bring the person,

Justices may grant warrants, &c.

“ person and persons so complained of before him or them, or  
 “ some other of his majesty’s justices of the peace for the same  
 “ county, riding, division, or city; and if, when such person or  
 “ persons shall be so brought before such justice or justices, he,  
 “ she, or they, shall not give such an account of the use or pur-  
 “ pose to which such tools or utensils, or parts or parcels thereof,  
 “ are intended to be appropriated, as shall be satisfactory to the  
 “ justice or justices before whom he, she, or they shall be brought  
 “ as aforesaid, then, and in such case, it shall and may be lawful  
 “ to and for such justice or justices, not only to cause all such  
 “ tools or utensils, or parts or parcels thereof, which shall have  
 “ been seized as aforesaid, to be detained, but also to bind the  
 “ person or persons so charged to appear at the next assizes,  
 “ general gaol delivery, or quarter-sessions of the peace for the  
 “ county, city, riding, or division, where such offence shall be  
 “ committed, with reasonable sureties for his, her, or their ap-  
 “ pearance; and in case such person or persons shall refuse or  
 “ neglect to give such security, then, and in such case, it shall  
 “ and may be lawful to and for such justice and justices to  
 “ commit the person or persons so refusing to the county gaol,  
 “ there to be kept until the next assizes or next quarter-sessions  
 “ of the county, city, riding, or division, where such commitment  
 “ shall be, at the election of such justice of the peace, and until  
 “ he, she, or they shall be delivered by due course of law: and  
 “ in case any such person or persons shall be convicted upon any  
 “ indictment or information against him, her, or them, at such  
 “ assize or general gaol-delivery, or quarter-sessions of the peace  
 “ as aforesaid, of collecting, obtaining, or getting into his, her, or  
 “ their custody or possession, such tools or utensils, or parts or  
 “ parcels thereof, with such intent as aforesaid; then, and in such  
 “ case, the person or persons so offending shall, for every such  
 “ offence, not only forfeit and lose all such tools and utensils,  
 “ and parts and parcels thereof, which shall be so seized and de-  
 “ tained, but also the sum of two hundred pounds of lawful  
 “ money of Great Britain, to be recovered by action of debt,  
 “ bill, plaint, or information, in any of his majesty’s courts of re-  
 “ cord at Westminster, or in the court of session in Scotland, or  
 “ in any of the four courts at Dublin respectively, wherein no  
 “ essoin, protection, privilege, wager of law, or more than one  
 “ imparlance, shall be allowed.”

and in case  
 such person be  
 convicted he  
 shall lose all  
 such utensils,  
 and forfeit 200*l*.

† Sect. 12. By 14 Geo. 3. c. 71. s. 6. “ One moiety of the Forfeitures.  
 “ respective forfeitures by this act inflicted upon offenders against  
 “ the same, shall, when recovered, go and be applied to the use  
 “ of his majesty, his heirs and successors, and the other moiety  
 “ to the use of the person or persons who shall sue and prose-  
 “ cute for the same respectively.”

† Sect. 13. And by 14 Geo. 3. c. 71. s. 7. “ If any suit or Limitations of  
 “ action shall be commenced against any person for what he shall actions.  
 “ do in pursuance of this act, such action shall be commenced  
 “ within six months after the fact committed; and the person so  
 “ sued may file common bail, or enter a common appearance, General issue.  
 “ and plead the general issue Not Guilty, and may give this act  
 “ and



Treble costs.

"and the special matter in evidence; and if the plaintiff or prosecutor shall become nonsuit, or suffer discontinuance, or if a verdict pass against him or her, or if, upon demurrer, judgment be given against the plaintiff, the defendant shall recover treble costs."

If any person shall pack or put on board any vessel any machine, &c. used in the woollen, &c. manufactures, or any model of such machine, &c.

any justice may grant a warrant for seizing such machines, &c.

† Sect. 14. By 21 Geo. 3. c. 37. s. 1. it is enacted, "That if, at any time after the twenty-fourth day of June, 1781, any person or persons in Great Britain or Ireland shall, upon any pretence whatsoever, load, or put on board, or pack, or cause or procure to be laden, put on board, or packed, in order to be loaded or put on board of any ship or vessel, which shall not be bound directly to some port or place in Great Britain or Ireland, or shall lade, or cause or procure to be laden, on board any boat or other vessel, or shall bring, or cause to be brought, to any quay, wharf, or other place, in order to be so laden or put on board any such ship or vessel, any machine, engine, tool, press, paper, utensil, or implement whatsoever, which now is, or any time or times hereafter shall or may be used in, or proper for, the preparing, working, pressing, finishing, or completing, of the woollen, cotton, linen, or silk manufactures of this kingdom, or any or either of them, or any other goods wherein wool, cotton, linen, or silk, or any or either of them, are or is used, or any part or parts of such machine, engine, tool, press, paper, utensil, or implement, by what name or names soever the same shall be called or known; or any model or plan, or models or plans of any such machine, engine, tool, press, paper, utensil, or implement, or any part or parts thereof; and complaint being made, upon the oath of one or more credible witness or witnesses, before any justice or justices of the peace, it shall and may be lawful to and for such justice or justices of the peace to issue his or their warrant or warrants, not only to seize all such machines, engines, tools, press, paper, utensils, or implements, and part or parts thereof, and all such model or plan, models or plans, and part or parts thereof, together with the packages, and all other goods packed therewith, if any such there be, but also to bring the person or persons so complained of before him or them, or some other of his majesty's justices of the peace for the same county, city, riding, division, liberty, shire, stewardry, or place; and if, when such person or persons shall be brought before such justice or justices, he, she, or they, shall not give such an account of the use or purpose to which such machines, engines, tools, press, papers, utensils, or implements, and part or parts thereof, and all such model or plan, models or plans, and part or parts thereof, are intended to be appropriated, as shall be satisfactory to the justice or justices, before whom he, she, or they shall be brought as aforesaid, then, and in such case, it shall and may be lawful to and for such justice or justices, not only to cause all such machines, engines, tools, press, papers, utensils, or implements, models or plans, or part or parts thereof, which shall have been seized as aforesaid, together with the packages, and all other goods packed therewith, to be detained, but also to bind the person or persons so charged to appear at the next assizes, general gaol-delivery

livery, or quarter-sessions of the peace, for the county, city, riding, division, stewardry, or place, where such offence shall be committed, with reasonable sureties for his, her, or their appearance: and in case such person or persons shall refuse or neglect to give such security, then, and in such case, it shall and may be lawful to and for such justice or justices to commit the person or persons so refusing to the common gaol or house of correction, there to be kept until the next assizes, or next quarter-sessions of the county, city, riding, division, shire, stewardry, or place, where such commitment shall be, and until he, she, or they shall be delivered by due course of law. And in case any such person or persons shall be convicted of any of the offences aforesaid, upon any indictment or information against him, her, or them, at such assizes or quarter-sessions of the peace as aforesaid, the person or persons so offending shall, for every such offence, not only forfeit all such machines, engines, tools, press, paper, utensils, or implements, models or plans, or part or parts thereof respectively, together with the packages, and all other goods packed therewith, if any such there be, but also the sum of two hundred pounds of lawful money of Great Britain, and shall also suffer imprisonment in the common gaol, prison, or house of correction, of the county, city, riding, division, liberty, shire, stewardry, or place, wherein such offender or offenders shall be respectively convicted, for the space of twelve months, without bail or mainprize, and until such forfeiture shall be paid."

On neglect of giving security, the party may be committed.

Penalty on conviction.

† Sect. 15. By 21 Geo. 2. c. 37. s. 2. "It shall and may be lawful to and for any officer of his majesty's customs in Great Britain, and to and for any officer of the revenue in Ireland, and they are hereby required, to seize and secure, in some or one of his majesty's warehouses, all such machines, engines, tools, press, papers, utensils, or implements, or part or parts thereof, and all and every such model or plan, models or plans, or part or parts thereof, as such officer shall find or discover to be laid or put on board, or intended to be laid or put on board, of any ship, vessel, or boat, which shall not be bound directly to some port or place in Great Britain or Ireland, contrary to the true intent and meaning of this act, together with the packages, and all other goods packed therewith, if any such there be, and they are hereby indemnified in so doing: and all machines, engines, tools, press, papers, utensils, and implements, or part or parts thereof, model or plan, models or plans, or part or parts thereof, together with the packages, and other goods packed therewith, so seized and secured as aforesaid, shall, after condemnation thereof in due course of law, be publicly sold to the best bidder, by order of the commissioners of the customs in Great Britain, or commissioners of the revenue in Ireland respectively, and one moiety of the produce arising by the sale thereof, after deducting the charges of condemnation and sale, shall be to the use of his majesty, his heirs and successors, and the other moiety to the officer who shall seize and prosecute the same as aforesaid."

Custom-house officers empowered to seize all such machines, &c. going to be exported.

Penalty on captain taking on board any such machine, &c.

† Sect. 16. By 21 Geo. 3. c. 37. s. 3. "If the captain or master of any ship, vessel, or boat, in Great Britain or Ireland, shall knowingly or designedly permit or suffer any machine, engine, tool, press, paper, utensil, or implement, or part or parts thereof, or any model or plan, or part or parts thereof, by this act prohibited to be exported as aforesaid, to be put on board his said ship, vessel, or boat, every such captain or master shall, for every such offence, forfeit the sum of two hundred pounds; and if the said ship, vessel, or boat, shall belong to his majesty, his heirs or successors, then the captain or master thereof shall not only forfeit the sum of two hundred pounds, but shall also forfeit his employment, and be incapable of holding any office or employment under his majesty, his heirs or successors."

Penalty on custom-house officers who shall take any entry outward, &c. for exporting any such prohibited machines, &c.

† Sect. 17. By 21 Geo. 3. c. 37. s. 4. "If any customer, comptroller, surveyor, searcher, waiter, or other officer of the customs in Great Britain, or any officer of the revenue in Ireland, shall take, or knowingly or willingly suffer to be taken, any entry outward, or shall sign any cocket, warrant, or sufferance, for the shipping or exporting of any of the said machines, engines, tools, press, papers, utensils, or implements, or any part or parts thereof, or any of the said models or plans, or any part or parts thereof, by this act prohibited to be exported, or shall knowingly or willingly permit or suffer the same to be done, directly or indirectly, contrary to the true intent and meaning of this act, every such customer, comptroller, surveyor, searcher, waiter, or other officer of the customs, of Great Britain, or officer of the revenue of Ireland, shall, for every such offence, forfeit the sum of two hundred pounds, and shall also forfeit his office, and be incapable of holding any office or employment under his majesty, his heirs or successors."

Penalties and forfeitures.

† Sect. 18. By 21 Geo. 3. c. 37. s. 5. "That the several penalties and forfeitures herein-before mentioned (the manner of recovery whereof is not herein-before particularly directed) shall and may be sued for and recovered, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, or in the court of session in Scotland, or in any of the four courts at Dublin, in the name of his majesty's attorney-general or lord-advocate, or in the name of some officer or officers of the customs in Great Britain, or some officer or officers of the revenue in Ireland respectively, wherein no essoin, protection, privilege, wager of law, or more than one imparlance, shall be allowed; and one moiety of the said penalties and forfeitures shall go and be applied to the use of his majesty, his heirs and successors, and the other moiety to the use of such officer or officers of the customs or revenue, as shall sue and prosecute for the same respectively, after deducting the charges of prosecution from the whole."

If oath shall be made of any such prohibited machines, &c. being intended

† Sect. 19. By 21 Geo. 3. c. 37. s. 6. "If any person or persons hath or have in his, her, or their custody, power, or possession, or shall collect, obtain, make, apply for, or cause or procure to be made, any such machine, engine, tool, press, paper,

paper, utensil, or implement, or any part or parts thereof, or any such model or plan, models or plans, or part or parts thereof, as aforesaid, with intent to export, or that the same may be exported to some other port or place than Great Britain or Ireland, and complaint being made, upon the oath of one or more credible witness or witnesses, before any justice or justices of the peace, that there is reason to believe such person or persons hath or have in his, her, or their custody, power, or possession, or hath or have collected, obtained, made, applied for, or caused or procured to be made, any such machine, engine, tool, press, paper, utensil, or implement, or part or parts thereof, or any such model or plan, or models or plans, or part or parts thereof, as aforesaid, with intent to export, or that the same may be exported, to some other port or place than Great Britain or Ireland; then, and in any of the said cases, it shall and may be lawful to and for the said justice or justices of the peace to issue his or their warrant or warrants to seize all such machines, engines, tools, press, papers, utensils, or implements, or part or parts thereof, and all such models or plans, or part or parts thereof, as aforesaid, and to bring the person or persons so complained of before him or them, or some other of his majesty's justices of the peace for the same county, city, riding, division, shire, stewardry, or place; and if such person or persons shall not give such an account of the use or purpose to which such machines, engines, tools, press, papers, utensils, or implements, or part or parts thereof, models or plans, or part or parts thereof, is, are, or were intended to be appropriated, as shall be satisfactory to the justice or justices before whom he, she, or they, shall be brought as aforesaid, then, and in such case, it shall and may be lawful to and for such justice or justices to cause all such machines, engines, tools, press, paper, utensils, or implements, or part or parts thereof, models or plans, or part or parts thereof, which shall have been so seized as aforesaid, to be detained, and also to bind the person or persons so charged to appear at the next assizes, general gaol-delivery, or quarter-sessions of the peace, for the county, city, riding, division, shire, stewardry, or place, where such offence shall be committed, with reasonable sureties for his, her, or their appearance: and in case such person or persons shall refuse or neglect to give such security, then, and in such case, it shall and may be lawful to and for such justice or justices to commit such persons or persons to the county gaol, prison, or house of correction, there to remain until the next assizes or quarter-sessions of the county, city, riding, division, liberty, stewardry, or place, where such commitment shall be, and until he, she, or they, shall be delivered by due course of law. And in case any such person or persons shall be convicted, upon any indictment or information against him, her, or them, at such assizes or quarter-sessions of the peace as aforesaid, of having in his, her, or their custody, power, or possession, or of having collected, obtained, made, applied for, or caused or procured to be made, any such machine, engine, tool, press, paper, utensil, or implement, or part or parts thereof, model or plan, or part or parts thereof,

to be exported, they may be seized, &c.

On neglect of giving security, the party may be committed.

Penalty on conviction.

" with

Prosecution within twelve months.	<p>“ with such intent as aforesaid, then, and in such case, the person or persons so convicted shall, for every such offence, forfeit and lose all such machines, engines, tools, press, papers, utensils, or implements, or part or parts thereof, models or plans, or part or parts thereof, which shall be so seized and detained, and also the sum of two hundred pounds of lawful money of Great Britain; and shall suffer imprisonment in the common gaol of the county, city, riding, division, shire, stewardry, or place, wherein such offender or offenders respectively shall be convicted, for the space of twelve months, without bail or mainprize, and until such forfeiture shall be paid: provided nevertheless, that no person shall be prosecuted for any of the offences aforesaid in this clause mentioned, unless such prosecution shall be commenced within the space of twelvemonths next after such offence shall be committed.”</p>
Forfeitures to informer.	<p>† <i>Sect. 20.</i> By 21 Geo. 3. c. 37. s. 7. “ The respective forfeitures by this act inflicted upon offenders against the same, shall, when recovered (where the same is not by this act otherwise provided), go and be applied to the use of the informer, after the expenses of the prosecution are paid.”</p>
Limitation of actions.	<p>† <i>Sect. 21.</i> By 21 Geo. 3. c. 37. s. 8. “ If any suit or action shall be commenced against any person for what he shall do in pursuance of this act, such suit or action shall be commenced within six months next after the fact committed, and the person so sued may file common bail, or enter a common appearance, and plead the general issue not guilty, and may give this act and the special matter in evidence; and if the plaintiff or prosecutor shall become nonsuit, or suffer discontinuance, or if a verdict pass against him or her, or if, upon demurrer, judgment shall be given against the plaintiff, the defendant shall recover treble costs.”</p>
General issue.	
Treble costs.	
Not to extend to wool cards, &c. exported to America.	<p>† <i>Sect. 22.</i> But by 21 Geo. 3. c. 37. s. 9. it is provided, “ That nothing herein contained shall extend to the preventing wool cards, or stock cards, not exceeding in value four shillings per pair, and spinners’ cards not exceeding in value one shilling and six-pence per pair used in the said woollen manufacture, from being exported to any of his majesty’s colonies or plantations in America.”</p>
Penalty on exporting, or attempting to export, any blocks, &c.	<p>† <i>Sect. 23.</i> By 22 Geo. 3. c. 60. s. 3. it is enacted, “ That it shall not be lawful for any person or persons whomsoever to export from Great Britain to any parts beyond the seas, any blocks, plates, engines, tools, or utensils, commonly used in, or which are proper for the preparing, working up, or finishing, of the calico, cotton, muslin, or linen-printing manufactures, or any part or parts of such blocks, plates, engines, tools, or utensils; and if any person or persons shall put, or endeavour to put, on board any ship, boat, barge, lighter, or other vessel, not bound directly to some port in Great Britain, “ any</p>

any such blocks, plates, engines, tools, or utensils, or part or parts thereof, every such person shall forfeit all such blocks, plates, engines, tools, or utensils, or part or parts thereof; and also shall forfeit and pay the sum of five hundred pounds of lawful money of Great Britain, to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, or in the court of session in Scotland respectively, wherein no essoin, protection, or wager of law, nor more than one imparlance, shall be allowed."

† Sect. 24. By 22 Geo. 3. c. 60. s. 4. "It shall be lawful for any officer or officers of his majesty's customs or excise, and they are hereby required and directed, from time to time, to seize, and secure in some of his majesty's warehouses, all such blocks, plates, engines, tools, or utensils, or part or parts thereof, the exportation whereof is hereby prohibited, as he or they shall find, or be informed to be, on board, or in a way of being put on board, any ship, boat, barge, lighter, or other vessel, not bound directly to some port in Great Britain; and all blocks, plates, engines, tools, or utensils, or part or parts thereof, so seized, shall, after condemnation thereof in due course of law, be publicly sold to the best bidder, to be used in Great Britain, and not elsewhere; and one moiety of the produce shall go to the use of his majesty, his heirs and successors, and the other moiety to the officer or officers who shall have seized and secured the same."

Officers empowered to seize such blocks, &c.

† Sect. 25. By 22 Geo. 3. c. 60. s. 5. "If the captain, master, mate, or other officer, of any ship or other vessel in Great Britain or Ireland, shall willingly or knowingly permit or suffer any such blocks, plates, engines, tools, or utensils, or part or parts thereof, to be put on board his or their ship or other vessel, or shall connive at the same being done, he or they shall, for every such offence, forfeit and pay the sum of one hundred pounds of lawful money of Great Britain, to be recovered as the penalties by this act imposed on persons exporting blocks, or other things, as aforesaid, are directed to be recovered; and if the ship or vessel belongs to his majesty, his heirs or successors, the captain or other officer or officers thereof, so permitting, suffering, or conniving, shall, besides forfeiting the said sum of one hundred pounds, be, and is and are hereby declared to be, incapable of holding any office or commission under his majesty, his heirs or successors."

Penalty on captains, &c. who shall permit such blocks, &c. to be put on board.

† Sect. 26. By 22 Geo. 3. c. 60. s. 6. "If any officer or officers of his majesty's customs shall take, or knowingly and willingly permit or allow or suffer to be taken, any entry or entries outward, or sign any cocket or cockets or sufferance, for the shipping or exporting of any of the said blocks, plates, engines, tools, or utensils, or part or parts thereof, or knowingly suffer the same to be done, he or they shall forfeit and pay the sum of one hundred pounds of lawful money of Great Britain, to be recovered in manner aforesaid; and shall also forfeit and lose his or their office or employment, and be

Penalty on officers who shall take any entry outward for exporting any of the said blocks, &c.

"for

“for ever rendered incapable of holding any office or employment under his majesty, his heirs or successors.”

## Forfeitures,

† *Sect. 27.* By 22 Geo. 3. c. 60. s. 7. “One moiety of the respective forfeitures by this act inflicted on offenders against the same, shall, when recovered, go and be applied to the use of his majesty, his heirs and successors; and the other moiety to the use of the person or persons who shall sue and prosecute for the same respectively.”

## Limitation of actions.

† *Sect. 28.* And by 22 Geo. 3. c. 60. s. 8. “If any action or suit shall be commenced against any person for what he shall do in pursuance of this act, such action or suit shall be commenced within six calendar months next after the fact committed; and the person so sued shall and may file common bail, and enter a common appearance, and plead the

## General issue.

“general issue not guilty, and may give this act and the special matter in evidence; and if the plaintiff or prosecutor shall become nonsuit, or suffer discontinuance, or if a verdict shall pass against him, or if, upon demurrer, judgment shall be given against him, then, and in any of the cases aforesaid, the defendant shall recover treble costs.”

## Treble costs.

† *Sect. 29.* By 25 Geo. 3. c. 67. s. 1. it is recited, “That the exportation of the several tools and utensils made use of in preparing, working up, and finishing, the iron and steel manufactures of this kingdom, or either of them, will enable foreigners to work up such manufactures, and thereby greatly diminish the exportation of the same from this kingdom; therefore, for the preserving as much as possible to his majesty’s subjects the benefits arising from those great and valuable branches of trade and commerce, it is enacted, That if, at any time after the first day of August, 1785, any person or persons in Great Britain shall, upon any pretence whatsoever, export, load, or put on board, or pack, or cause or procure to be laden, put on board, or packed, in order to be loaded or put on board, of any ship or vessel which shall be bound to some port or place in parts beyond the seas (except to Ireland), or shall lade, or cause or procure to be laden, on board any boat or other vessel, or shall bring, or cause to be brought, to any quay, wharf, or other place, in order to be so laden or put on board any such ship or vessel, any tool or utensil hereafter mentioned; that is to say, hand stamps, doghead stamps, pulley stamps, stamps of all sorts, hammers and anvils for stamps, screws for stamps, iron rods for stamps, presses of all sorts, in iron, steel, or other metal, which are used for giving impressions to metal, or any parts of these several articles; presses of all sorts called cutting-out presses, beds and punches to be used therewith; piercing presses of all sorts, beds and punches to be used therewith, either in parts or pieces, or fitted together; iron or steel dies to be used in stamps or presses, either with or without impressions on them; rollers of cast iron, wrought iron, or steel, for rolling of metal, and frames for the same; flasks or casting-moulds, and boards used therewith; lathes of all sorts for turning, burnishing, polishing, “either

No person to put on board any vessel for exportation any tool, &c. in the act specified,

either the whole together, or separate parts thereof; lathe strings, polishing brushes, scoring or shading engines, presses for horn buttons, dies for horn buttons, sheers for cutting of metal, rolled steel, rolled metal with silver thereon, parts of buttons not fitted up into buttons or in an unfinished state; engines for chasing, stocks for casting buckles, buttons, and rings; cast-iron anvils and hammers for forging mills for iron and copper; roles, slitters, beds, pillars and frames for slitting mills; die-sinking tools of all sorts, engines for making button shanks, laps of all sorts, drilling engines, tools for pinching of glass, engines for covering of whips, polishing brushes, bars of metal covered with gold or silver, iron or steel screw plates, pins, and stocks for making screws, or any other tool or utensil whatsoever, which now is, are, or at any time or times hereafter shall or may be used in, or proper for, the preparing, working, finishing, or completing, of the iron or steel manufactures of this kingdom, or either of them, by what name or names soever the same shall be called or known, or any model or plan, or models or plans, of any such tool, utensil, or implement, or any part or parts thereof; the person or persons so offending shall, for every such offence, not only forfeit and lose all such tools or utensils, or parts or parcels thereof, together with the packages, and all other goods packed therewith, if any such there be; and complaint being made, upon the oath of one or more credible witnesses or witnesses, before any justice or justices of the peace, it shall and may be lawful to and for such justice or justices of the peace to issue his or their warrant or warrants to bring the person or persons so complained of before him or them, or some other of his majesty's justices of the peace for the same county, city, riding, division, liberty, shire, stewardry, or place; and if, when such person or persons shall be brought before such justice or justices, he, she, or they, shall not give such an account of the use or purpose to which such tools, utensils, or implements, and part or parts thereof, and all such model or plan, models or plans, and part or parts thereof, are intended to be appropriated, as shall be satisfactory to the justice or justices before whom he, she, or they, shall be brought as aforesaid, then, and in such case, it shall and may be lawful to and for such justice or justices to bind the person or persons so charged to appear at the next assizes, general gaol delivery, or quarter-sessions of the peace for the county, city, riding, division, stewardry, or place, where such offence shall be committed, with reasonable sureties for his, her, or their appearance; and in case such person or persons shall refuse or neglect to give such security, then, and in such case, it shall and may be lawful to and for such justice or justices to commit the person or persons so refusing to the common gaol or house of correction, there to be kept until the next assizes or next quarter-sessions of the county, city, riding, division, shire, stewardry, or place, where such commitment shall be, and until he, she, or they, shall be delivered by due course of law: and in case any such person or persons shall be convicted of any of the offences aforesaid, upon any indictment or information

on penalty of forfeiture thereof;

and if the offender shall not give a satisfactory account before the magistrate, he shall be bound to appear at the next assizes, &c.

or be committed for trial.

Penalty on conviction

“against



“against him, her, or them, at such assizes or quarter-sessions of the peace as aforesaid, the person or persons so offending shall, for every such offence, forfeit the sum of two hundred pounds of lawful money of Great Britain, and shall also suffer imprisonment in common gaol, prison, or house of correction, of the county, city, riding, division, liberty, shire, stewardry, or place, wherein such offender or offenders shall be respectively convicted, for the space of twelve months, without bail or mainprize, and until such forfeiture shall be paid.”

Officers of the customs to seize all such tools, &c. laid, or intended to be laid, on board any outward-bound vessel ;

† Sect. 30. By 25 Geo. 3. c. 67. s. 2. “It shall and may be lawful to and for any officer of his majesty’s customs in Great Britain, and they are hereby required, to seize and secure, in some or one of his majesty’s warehouses, all such tools, utensils, or implements, or part or parts thereof; and all and every such model or plan, models, or plans, or part or parts thereof, as such officers shall find or discover to be laid or put on board, or intended to be laid or put on board, of any ship, vessel, or boat, which shall be bound to some port or place in parts beyond the seas (except to Ireland), contrary to the true intent and meaning of this act, together with the packages, and all other goods packed therewith (if any such there be), and they are hereby indemnified in so doing; and all tools, utensils, and implements, or part or parts thereof, model or plan, models or plans, or part or parts thereof, together with the packages, and other goods packed therewith, so seized and secured as aforesaid, shall, after condemnation thereof in due course of law, be publicly sold to the best bidder, by order of the commissioners of the customs in Great Britain respectively; and one moiety of the produce arising by the sale thereof, after deducting the charges of condemnation and sale, shall be to the use of his majesty, his heirs and successors, and the other moiety to the officer who shall seize and prosecute for the same as aforesaid.”

such goods to be sold.

Penalty on masters of vessels who shall permit any such tools, &c. to be put on board.

† Sect. 31. By 25 Geo. 3. c. 67. s. 3. “If the captain or master of any ship, vessel, or boat in Great Britain, shall knowingly or designedly permit or suffer any tool, utensil, or implement, or part or parts thereof, or any model or plan, or part or parts thereof, by this act prohibited to be exported as aforesaid, to be put on board his said ship, vessel, or boat, every such captain or master shall, for every such offence, forfeit the sum of two hundred pounds; and if the said ship, vessel, or boat, shall belong to his majesty, his heirs or successors, then the captain or master thereof shall not only forfeit the sum of two hundred pounds, but shall also forfeit his employment, and be incapable of his holding any office or employment under his majesty, his heirs or successors.”

Penalty on officers of customs taking any entry outwards, &c. for such tools or utensils.

† Sect. 32. By 25 Geo. 3. c. 67. s. 4. “If any customer, comptroller, surveyor, searcher, waiter, or other officers of the customs in Great Britain, shall take, or knowingly or willingly suffer to be taken, any entry outward, or shall sign any cocket, warrant, or sufferance, for the shipping or exporting of any of the

the said tools, utensils, or implements, or any part or parts thereof, or any of the said models or plans, or any part or parts thereof, by this act prohibited to be exported, or shall knowingly or willingly permit, or suffer the same to be done, directly or indirectly, contrary to the true intent and meaning of this act; every such customer, comptroller, surveyor, searcher, waiter, or other officer of the customs of Great Britain, shall, for every such offence, forfeit the sum of two hundred pounds, and shall also forfeit his office, and be incapable of holding any office or employment under his majesty, his heirs or successors."

† Sect. 33. By 25 Geo. 3. c. 67. s. 5. "If any person or persons hath or have in his, her, or their custody, power, or possession, or shall collect, obtain, make, apply for, or cause or procure to be made, any such tool, utensil, or implement, or any part or parts thereof, or any such model or plan, models or plans, or part or parts thereof as aforesaid, with intent to export, or that the same may be exported out of Great Britain to any port or place beyond the seas (except to Ireland); and complaint being made, upon the oath of one or more credible witness or witnesses, before any justice or justices of the peace, that there is reason to believe such person or persons hath or have in his, her, or their custody, power, or possession, or hath or have collected, obtained, made, applied for, or caused or procured to be made, any such tool, utensil, or implement, or part or parts thereof, or any such model or plan, or models or plans, or part or parts thereof, as aforesaid, with intent to export, or that the same may be exported to some other port or place than Great Britain or Ireland; then, and in any of the said cases, it shall and may be lawful to and for the said justice or justices of the peace to issue his or their warrant or warrants to seize all such tools, utensils, or implements, or part or parts thereof, and all such models or plans, or part or parts thereof, as aforesaid, and to bring the person or persons so complained of before him or them, or some other of his majesty's justices of the peace for the same county, city, riding, division, shire, stewardry, or place; and if such person or persons shall not give such an account of the use or purpose to which such tools, utensils, or implements, or part or parts, models or plans, or part or parts thereof, is, are, or were intended to be appropriated, as shall be satisfactory to the justice or justices before whom he, she, or they shall be brought as aforesaid, then, and in such case, it shall and may be lawful to and for such justice or justices to cause all such tools, utensils, or implements, or part or parts thereof, models or plans, or part or parts thereof, which shall have been so seized as aforesaid, to be detained; and also to bind the person or persons so charged to appear at the next assizes, general gaol-delivery, or quarter-sessions of the peace for the county, city, riding, division, shire, stewardry, or place, where such offence shall be committed, with reasonable sureties for his, her, or their appearance; and in case such person or persons shall refuse or neglect to give such security, then, and in such case, it shall and may be lawful to and for such

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Any person having in possession any such tool, utensil, &c. with intent to export the same, any justice may issue his warrant for seizing thereof, and bringing such person before him;

and if he shall not give a satisfactory account thereof, such tools, &c. may be detained, and the possessor bound over to appear at the next assizes, &c.

or may be committed.	<p>“ justice or justices to commit such person or persons to the county gaol, prison, or house of correction, there to remain until the next assizes or quarter-sessions of the county, city, riding, division, liberty, stewartry, or place, where such commitment shall be, and until he, she, or they shall be delivered by due course of law: and in case any such person or persons shall be convicted, upon any indictment or information against him, her, or them, at such assizes or quarter-sessions of the peace as aforesaid, of having in his, her, or their custody, power, or possession, or of having collected, obtained, made, applied for, or caused or procured to be made, any such tool, utensil, or implement, or part or parts thereof, model or plan, or part or parts thereof, with such intent as aforesaid, then, and in such case, the person or persons so convicted shall, for every such offence, forfeit and lose all such tools, utensils, or implements, or part or parts thereof, models or plans, or part or parts thereof, which shall be so seized and detained, and also the sum of two hundred pounds of lawful money of Great Britain, and shall suffer imprisonment in the common gaol of the county, city, riding, division, shire, stewartry, or place, wherein such offender or offenders respectively shall be committed, for the space of twelve months, without bail or mainprise, and until such forfeiture shall be paid.”</p>
Penalty in case of conviction.	
Prosecution to be commenced within twelve months.	<p>† Sect. 34. By 25 Geo. 3. c. 67. s. 7. “ Provided always, that no person shall be prosecuted for any of the offences aforesaid, unless such prosecution shall be commenced within the space of twelve calendar months next after such offence shall be committed.”</p>
Penalties and forfeitures how to be recovered and applied.	<p>† Sect. 35. By 25 Geo. 3. c. 67. s. 8. it is further enacted, “ That the several penalties and forfeitures herein-before mentioned shall and may be sued for and recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, or in the court of exchequer, or in the court of session in Scotland, in the name of his majesty's attorney-general, or lord-advocate, or in the name of some officer or officers of the customs of Great Britain respectively, wherein no essoin, protection, privilege, wager of law, or more than one imparlance, shall be allowed; and that one moiety of the said penalties and forfeitures shall go and be applied to the use of his majesty, his heirs and successors, and the other moiety to the use of such officer or officers of the customs as shall sue and prosecute for the same respectively, after deducting the charges of prosecution from the whole.”</p>
Limitation of actions.	<p>† Sect. 36. By 25 Geo. 3. c. 67. s. 9. it is further enacted, “ That if any suit or action shall be commenced against any person for what he shall do in pursuance of this act, such suit or action shall be commenced within three months next after the fact committed; and the person so sued may file common bail, or enter a common appearance, and plead the general issue not guilty, and may give this act and the special matter in evidence; and if the plaintiff or prosecutor shall become nonsuit, or suffer discontinuance, or if a verdict pass against him or her,</p>
General issue.	

“ her, or if, upon demurrer, judgment shall be given against the plaintiff, the defendant shall recover treble costs.”

Treble costs.

† Sect. 37. By 26 Geo. 3. c. 89. it is enacted, “ That it shall and may be lawful to export from Great Britain to the British islands in the West Indies, or to any other foreign part or place whatever, any tools or utensils made use of in the iron or steel manufactures of this kingdom, which might have been legally exported before the passing of the above recited act (except the several articles hereinafter particularly enumerated; that is to say, rollers either plain, grooved, or of any other form or denomination, of cast iron, wrought iron, or steel, for the rolling of iron, or any sort of metals, and frames, beds, pillars, screws, pinions, and each and every implement, tool, or utensil thereunto belonging; rollers, flitters, frames, beds, pillars, and screws for slitting mills; presses of all sorts in iron, steel, or other metals, which are used with a screw exceeding one inch and a half in diameter; or any parts of these several articles, or any model or models of any of the beforementioned utensils, implements, and machines, or any part or parts thereof; and all sorts of utensils, engines, or machines used in the casting or boring of cannon, or any sort of artillery, or any parts thereof, or any model or models of tools, utensils, engines, or machines used in casting or boring of cannon or any sort of artillery, or any parts thereof; hand-stamps, dog-head stamps, pulley stamps, hammers, and anvils for stamps, presses of all sorts, called cutting-out presses, beds and punches to be used therewith; piercing presses of all sorts, beds and punches to be used therewith, either in parts or pieces, or fitted together; scoring or shading engines, presses for horn buttons, dies for horn buttons, rolled metal with silver thereon, parts of buttons not fitted up into buttons, or in an unfinished state; engines for chasing, stocks for casting buckles, buttons, and rings; die-sinking tools of all sorts, engines for making button-shanks, laps of all sorts, tools for pinching of glass, engines for covering of whips, bars of metals covered with gold or silver, burnishing stones commonly called blood stones, either in the rough state or finished for use); any thing in the said recited act to the contrary in anywise notwithstanding.”

From July 10, 1786, such tools used in the iron and steel manufactures, &c. may be exported, as might have been before passing recited act, except the articles herein specified.

† Sect. 38. By 26 Geo. 3. c. 89. s. 2. “ It shall not be lawful for any person or persons, in the kingdom of Great Britain, to export to parts beyond the seas (except to Ireland), or to have in his, her, or their possession, with the intent so to export, any of the tools and utensils hereinafter mentioned; that is to say, wire moulds for making paper; wheels made of metal, stone, or wood, for cutting, roughing, smoothing, polishing, and engraving glass; purcellas, pincers, sheers, and pipes, used in blowing glass; potters wheels and potters lathes for plain, round, and for engine-turning tools, used by saddlers, harness-makers, and bridle-makers, namely, cantle-strainers, side-strainers, point-strainers, creasing-irons, screw-creasers, wheel-irons, seat-irons, pricking-irons, bolstering-irons, clams, head-knives; and that the said recited act, so far as the same concerns the exporters or possessors of the tools and utensils therein enumerated or

No person to have in possession, with intent to export (except to Ireland) any of the articles herein specified. Recited act, so far as relates to exporters of articles therein enumerated, to extend to exporters of articles specified in this act.

“ described

“described, shall extend, or be construed to extend, to all and every the exporters or possessors of the tools and utensils herein enumerated or described, as fully, to all intents and purposes, as if the same were repeated and re-enacted in the body of this act.”

Continuance of  
this act.

† Sect. 39. By 26 Geo. 3. c. 89. s. it is further enacted, “That this act shall continue in force until the end of the next session of parliament, and no longer”—Made perpetual by 35 Geo. 3. c. 38.

By sect. 2. of 26 Geo. 3. c. 89. “It is lawful to export any tools made use of in the iron or steel manufactures of this kingdom, which might have been exported before the 25 Geo. 3. except rollers either plain, grooved, or of any other form or denomination, of cast iron, wrought iron, or steel, for the rolling of iron or of any sort of metals, and frames, beds, pillars, screws, pinions, and each and every implement, tool, or utensil thereto belonging; rollers, slitters, frames, beds, pillars, and screws for slitting mills, presses of all sorts in iron, steel, or other metals, which are used with a screw exceeding one inch and a half in diameter, or any parts of these several machines, or any model or models of any of the beforementioned utensils, implements, and machines, or any part or parts thereof; and all sorts of utensils, engines, or machines, used in the casting or boring of cannon, or any sort of artillery, or any parts thereof, or any model or models of tools, utensils, engines, or machines, used in casting or boring of cannon, or any sort of artillery, or any parts thereof, and stamps, dog-head stamps, pulley stamps, hammers and anvils for stamps; presses of all sorts called cutting-out presses, beds and punches to be used therewith; piercing presses of all sorts, bed and punches to be used therewith, either in parts or pieces, or fitted together; scoring or shading engines, presses for horn buttons, dies for horn buttons, rolled metal with silver thereon, parts of buttons not fitted up into buttons, or in an unfinished state; engines for chasing stocks for casting buckles, buttons, and rings; die-sinking tools of all sorts, engines for making button-shanks, laps of all sorts, tools for pinching of glass, engines for covering of whips; bars of metals covered with gold or silver, burnishing stones commonly called blood stones, either in the rough state or finished for use.”

By 44 Geo. 3. c. 70. Machinery and tools for erecting a mint in Denmark are allowed to be exported.

And 50 Geo. 3. c. 63. The like for the Brazils.

## 7. Usury.

In treating of USURY, I shall consider,

1. What shall be deemed usury.
2. How it is restrained by common law.

2. How

## 3. How by statute.

As to the FIRST POINT, viz. What shall be deemed usury.

*Sect. 1.* It seems that usury, in a strict sense, is a contract upon the loan of money to give the lender a certain profit for the use of it, upon all events, whether the borrower make any advantage of it, or the lender suffer any prejudice for the want of it, or whether it be repaid on the day appointed or not.

Wood's Inst.  
b. 3. p. 425.  
3 Inst. 151.  
B. Usury, 12.  
2 Strange, 816.  
1243.  
4 Com. 156.  
2 Com. 455.  
Gibs, 1070.  
Cowper, 793.

*Sect. 2.* And in a larger sense it seemeth, that all undue advantages taken by a lender against a borrower come under the notion of usury, whether there were any contract in relation thereto or not; as where one in possession of land, made over to him for the security of a certain debt, retains his possession after he hath received all that is due from the profits of the land.

*Sect. 3.* But it hath been resolved, that an agreement to pay double the sum borrowed, or other penalty, on the non-payment of the principal debt at a certain day, is not usurious, because it is in the power of the borrower wholly to discharge himself, by repaying the principal according to the bargain.

2 R. Abr. 801.  
26 Edw. 3. 71.  
2 Inst. 89.  
5 Rep. 69.  
Cowper, 113.

As to the SECOND POINT, viz. How usury is restrained by the common law.

*Sect. 4.* It is said, that anciently it was holden to be absolutely unlawful for a christian to take any kind of usury, and that whosoever was guilty of it, was liable to be punished by the censures of the church in his life-time; and that if after death any one was found to have been a usurer while living, all his chattels were forfeited to the king, and his lands escheated to the lord of the fee.

3 Inst. 151.  
2 R. Abr. 800.  
2 Inst. 506.  
Palm. 293.  
Temp.  
Hardwicke,  
420.

*Sect. 5.* Also it seemeth to have been the opinion of the makers of some late acts of parliament, as 5 Edw. 6. c. 20. 13 Eliz. c. 8. s. 5. and 21 Jac. 1. c. 17. s. 5. that all kinds of usury are contrary to good conscience.

2 Ventris, 42.  
2 Vern. 145.  
Eq. Ca. Ab.  
288.

*Sect. 6.* And agreeably hereto it seemeth formerly to have been the general opinion, that no action could be maintained on any promise to pay any kind of use for the forbearance of money, because that all such contracts were thought to be unlawful, and consequently void.

2 R. Abr. 801.  
1 R. Abr. 18.  
2 Roll. 239.  
Palm. 293.

*Sect. 7.* But it seems to be generally agreed at this day, that the taking of reasonable interest for the use of money is in itself lawful, and consequently that a covenant or promise to pay it, in consideration of the forbearance of a debt, will maintain an action; for why should not one who has an estate in money be as well allowed to make a fair profit of it, as another who has an estate in land; and what reason can there be, that the lender of money should not as well make an advantage of it as the borrower? Neither do the passages in the Mosaical law, which are generally urged against the lawfulness of all usury, if fully considered, so much prove the unlawfulness, as the lawfulness of it; for if all

1 R. Abr. 25.  
2 R. Abr. 782.  
602.  
Winch. 114.  
1 Ven. 198.  
3 Keble, 15.  
C. Car. 275.  
Exod. c. xxii. v. 25.  
Levit. c. xxv. v. 36, 37.  
Deuter. c. xxiii. v. 19, 20.

usury

usury were against the moral law, why should it not be as much so in respect of foreigners, of whom the Jews were expressly allowed to take it, as in respect of those of the same nation, of whom alone they were forbidden to receive it? From whence it seems clearly to follow, that the prohibition of it to that people was merely political, and consequently doth not extend to any other nation.

As to the THIRD POINT, *viz.* How usury is restrained by statute.

No more than five *per cent.* shall be taken for the loan of money.

*Sect. 8.* By 12 Ann. c. 16. "No person whatsoever shall, upon any contract, take, directly or indirectly, for loan of any money, wares, merchandize, or other commodities whatsoever, above the value of five pounds, for the forbearance of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time."

Contracts on which more than five *per cent.* is reserved or taken, are void.

*Sect. 9.* And by 12 Ann. c. 16. it is enacted, "That all bonds, contracts, and assurances whatsoever, for payment of any principal, or money to be lent, or covenanted to be performed upon, or for any usury, whereupon or whereby there shall be reserved or taken above the rate of five pounds in the hundred, as aforesaid, shall be utterly void."

Whoever shall usuriously take more than five *per cent.* shall forfeit treble value.

3 Atk. 154.  
3 Keble, 259, 260.  
1 Vent. 253.  
3 Wils. 250.

) C. Jac. 25.  
Moor, 644.  
Noy, 41.  
C. Car. 283.  
1 Leonard, 43.  
C. Ellz. 20.  
2 Leo. 38.

1 Atk. 340.  
1 Ves. 142.

*Sect. 10.* And by 12 Ann. c. 16. s. 2. "All and every person or persons whatsoever, which shall, upon any contract, take, accept, and receive, by way or means of any corrupt bargain, loan, exchange, chevizance, shift, or interest of any wares, merchandize, or other thing or things whatsoever, or by any deceitful way or means, or by any covin, engine, or deceitful conveyance, for the forbearing or giving day of payment for one whole year, or of and for their money or other thing, above the sum of five pounds, for the forbearing of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a (a) longer or shorter term, shall forfeit and lose for every such offence the treble value of the money, wares, merchandizes, and other things so lent, bargained, exchanged, or shifted."

The expositions which were made of the former statutes of usury being equally applicable to this, which is penned almost in the very same words, I shall take notice of the principal of them, as well as decisions upon this statute, as that—

Dalis. 12.  
Con. Ray. 197.

† *Sect. 11.* A contract made before the statute is no way within the meaning of it, and therefore it is still lawful to receive six *per cent.* in respect of any such contract.

Godly v. Boly,  
amy, 2 Burr.  
1091.

† *Sect. 12.* A bond given at Calcutta in the East Indies, where both parties reside at the time, on which nine *per cent.* is reserved, is not within the statute.

Salkeld, 544.  
5 And. 121.  
Moor, 752.  
C. Jac. 32, 33.  
Melvinton, 47.  
Burr. 1077.  
Modern, 118.  
Strange, 1249.  
Nisi P. 27.

*Sect. 13.* A bond made to secure a just debt, payable with lawful interest, shall not be avoided by reason of a corrupt agreement between the obligors, to which the obligee was no way privy; as where A. being indebted to B. in a hundred pounds, agrees to give him thirty pounds for the forbearance of that hundred pounds for a year, and gives him a bond of sixty pounds for payment

payment of the thirty pounds, and for the payment of the hundred pounds enters into a bond of two hundred pounds, together with B., for the payment of a true debt of one hundred pounds due from B. to C.

**Sect. 14.** The receipt of higher interest than is allowed by the statute, by virtue of an agreement subsequent to the first contract, does not avoid an assurance fairly made, and agreeable to the statute, but only subjects the party to the forfeiture of treble value: for the words are, "That all assurances for the payment of any principal, &c. whereupon or whereby there shall be received or taken above the rate of five pounds in the hundred, &c. shall be utterly void." Pollard v. Scholey, Cro. Eliz. 20.  
Ray, 191.  
4 Burr, 22. 53.

† **Sect. 15.** So also where A. sold goods at three months credit, but stipulated that, if the money was unpaid, the vendee should allow him a halfpenny an ounce for every month until the debt was discharged, which exceeded the legal rate of interest, yet the contract being a *bonâ fide* sale, and the subsequent agreement according to the usage in that particular branch of trade, it was not usurious; but it would have been otherwise if the sale had been merely colourable, to cover the loan and evade the statute. Floyer v. Edwards, Cowp. 112.

† **Sect. 16.** So where A. was fairly indebted to B. in one thousand one hundred and twenty-five pounds, and on A. desiring time to pay it, B. insisted that one hundred and fifty pounds should be added to the debt, as he would have nothing to do with interest, and A. accordingly gave him five acceptances for these two sums, payable within fourteen months, it was held that the *bonâ fide* debt subsisted unimpeached by the subsequent usurious transaction. Gray v. Fowler, 1 H. Bl. Rep. 462.

† **Sect. 17.** So in an action for usury, where it was proved to be the custom to discount bills in London for persons in the country, and to charge on such bills the usual discount of interest of five *per cent.* and also five shillings *per cent.* on the gross sum, as commission to answer the extraordinary expenses of clerks, &c. kept for this business, it was adjudged not to be usury. Winch v. Fen, Sett. B. R. Hilary Term, 1786.  
See 2 Term Rep. 52, notis

† **Sect. 18.** So where a bill of exchange indorsed over is not duly paid, the indorsee may charge the indorser with interest, exchange, and other incidental expenses, beyond the amount of five *per cent.* if such charges are reasonable, warranted by usage, and not made a colour for usury. Auriol v. Thomas, 2 T. Rep. 52.

† **Sect. 19.** But if a sum of money is lent upon an agreement to pay legal interest, and a premium over and above is paid when the money is advanced, the security is void, although such premium do not of itself exceed the legal interest, but the penalty is not incurred till more than legal interest is actually received. Fisher *qui tam* c. Beasley, Doug. 235.

**Sect. 20.** The grant of an annuity for lives not only exceeding the rate allowed for interest, but also exceeding the known proportion for contracts of this kind, in consideration of a certain sum Tanfield v. Finch, C. El. 27.  
Richards v. Brown, Cowp. 728.

Confirmed by  
Ld. Thurlow, Hil. 21 Geo. 3. Brown's Rep. Chan. 93. Ld. Irnham v. Child.



sum of money, is not within the meaning of the statute, unless there were some underhand bargain for the security of the repayment of the principal or consideration money.

Richards v.  
Brown,  
Cowp. 770.

† *Sect. 21.* Therefore where A. applied to B. to borrow six hundred pounds, and B. agreed to lend it him, and actually advanced two hundred pounds of the money, on a deposit of certain securities, but when A. applied for the remaining four hundred pounds, B. by falsely pretending that he had not the money himself, but must get it from a friend, who, he said, never lent money but upon annuity at six years purchase, which was consented to and given by A. accordingly, and B. took five *per cent.* procuration-money, this loan, though in the shape of an annuity, was held usury.

Murray v.  
Harding,  
3 Wils. 390.

† *Sect. 22.* But where the loan was in the form of an annuity, and there was a clause in the deed, that the borrower might repay the sum given for the annuity at a future period, the court held it not usury, although the clause seemed to make the sum advanced the loan, and the annuity the interest; for the repayment was casual, and depended on the borrower himself, so that it was not in the lender's power to have his money at all events.

2 Roll. 43.  
2 Black. 863.  
1 Lev. 54.  
1 Sid. 27.  
1 Atk. 340.

\* *Sect. 23.* No contract is usurious by which the lender runs the hazard of losing all his money, both principal and interest; as where on the loan of a certain sum for a year, for the victualling of a ship, it is agreed, that if the ship return, the lender shall have so many thousand fishes, at such a rate, which exceeds the interest allowed by the statute, and if the ship never return, or if it perish by unavoidable casualties of sea, fire, or enemies, that then he shall have nothing.

3 Keble, 304.  
Said to be good  
law, 1 Atk. 344.  
Vide C. Eliz.

*Sect. 24.* But it is clear, that if the interest only be hazarded on such a contract, and the whole principal secured, the whole is usurious.

741. Cro. Jac. 507.

Shower's Rep. 9.

*Sect. 25.* So also where on the loan of thirty pounds a bond is given for the payment of a hundred pounds, on the marriage of a daughter of one of the parties; "provided, that if either of them should die before, that then nothing should be paid."

Chesterfield v.  
Jansen,  
1 Atk. 339.

† *Sect. 26.* So a loan of five thousand pounds, to be paid ten thousand pounds on the death of A. in the life-time of B. is not a usurious contract within 12 Ann. c. 16. for in this case, if the contingency happen one way, the whole money is lost.

Monist v.  
King, 2 Burr.  
891.

† *Sect. 27.* So where A. lent one hundred pounds to B. for four years without interest, but B. agreed to find the daughter of A. with meat and drink for that time, and also to take her into partnership, she to pay a moiety of the charges and losses of the business, and to receive half of the profits, it was held not to be usury, although the pecuniary advantages gained by A. might exceed five *per cent.*

Morser Wilson,  
4 T. Rep. 333.

† *Sect. 28.* But if the borrower of money give a bond for the principal and interest at five *per cent.* and covenant at the same time also to pay to the lender a certain portion of the profits of

a trade carried on by him in partnership with another person, this is an usurious contract, and the obligee cannot recover on the bond; for though he was to gain by the profits, he was not to stand to the losses of the trade.

*Sect. 29.* Also it hath been resolved, that an agreement to pay more than the lawful interest for the loan of a certain sum at such a day if A. B. shall be then alive, and if he shall be dead, then to pay such a sum which is less than the principal, is void by the statute; for if such a contingency would exempt the case out of the statute, by the same reason twenty lives might be added, and the statute wholly evaded:

Button v. Durnham, Cro. Eliz. 642.  
Clayton's case, 5 Co. 70.

† *Sect. 30.* So also if the contingency be on a young and healthy person dying within three months, this shall be deemed usurious; for being so slight, it appears to be a mere evasion.

Richards v. Brown, Cowp. 770.

*Sect. 31.* An assurance made in pursuance of a fair agreement for such interest as is allowed by the statute, shall not be avoided by the fault of the scrivener, who draws it up in such a manner as to bring it within the express letter of the statute.

C. Jac. 677.  
2 Roll. 414.  
Hct. 11.  
2 Ven. 83.  
3 Wils. 396.

*Sect. 32.* As where the parties agree that five pounds shall be paid for the loan of a hundred pounds for a year, and the scrivener, in drawing the bond for it, doth, without the knowledge of the parties, who are illiterate persons, make the five pounds payable at the end of half a year.

Hard. 418.  
2 Mod. 307.

*Sect. 33.* So where on the fair loan of a hundred pounds, agreed to be paid with common interest, a mortgage is made for the hundred pounds, with a proviso, that it shall be void on payment of one hundred and five pounds at the end of one year, without any covenant for the mortgagor to take the profits till default be made of payment, so that in strictness the mortgagee is intitled both to the interest and profits.

† *Sect. 34.* So also if a bond be conditioned for the payment of one hundred pounds by quarterly payments of five pounds each, and interest at five *per cent.* this shall not be rendered a usurious contract by the indorsement of a memorandum thereon, "That at the end of each year the year's interest due shall be added to the principal, and then the twenty pounds received in the course of the year deducted, and the balance remain as the principal."

Le Grange v. Hanilton, 4 T. Rep. 613.  
S. C. 2 H. Bl. Ref. 144.

† *Sect. 35.* So if A. for one hundred and twenty pounds grant an annuity of twenty pounds out of a living, with a promise of redemption in five years, and give bond for the performance, this is not usury, though the agent in drawing the deed state that it was a loan of money.

Murray v. Harding, 3 Wils. 390.  
2 Bl. Rep. 559.

*Sect. 36.* The reservation of a greater sum than is allowed by the statute for interest, upon the non-payment of the principal at the end of the year, is not usurious within the statute, because it is in the power of the borrower to avoid the payment of the money so reserved, by paying the principal at the day appointed; yet it seemeth clear, that if it were originally agreed that the principal money should not be paid at the time appointed, and that

5 Co. 69.  
C. Jac. 509.  
Cowper, 113.  
2 Bur. 715.  
C. Eliz. 643.  
1 Lut. 464.  
2 Bur. 891.  
1 Atk. 342.  
1 Atk. 351.

5 Co. 69.  
Sec Mo. 397.  
2 And. 16.  
1 Atk. 550.  
Cowper, 794.  
2 Str. 1243.

that such clause was inserted only with an intent to evade the statute, the whole contract is void; for the construction of cases of this nature must be governed by the circumstances of the whole matter, from which the intention of the parties will appear in the making of the bargain, which, if it was in truth usurious, is void, however it may be disguised by a specious assurance.

Tate v. Wel-  
lings, 3 Term  
Rep. 531.

† Sect. 37. Therefore the loan of money produced by the sale of stock, on an agreement that the borrower shall replace this stock on a certain day, or repay the money on a subsequent day with such interest in the meantime as the stock itself would have produced, is not usurious, though the interest exceed five *per cent.* unless the transaction be colourable, and a mere device to obtain more than legal interest.

(a) C. Jac. 251  
508.  
2 Roll. 48.  
2 Lev. 7, 8.  
(b) Lutw. 273.  
466.

Sect. 38. It is not (a) material whether the payment both of the principal and also of the usurious interest be secured by the same (b) or by different conveyances; but that all writings whatsoever for the strengthening such a contract are void.

Sect. 39. A contract reserving to the lender a greater advantage than is allowed by the statute, is equally within the meaning of it (c) whether the whole be reserved by way of interest, or in part only under that name, and in part by way of rent for a house, let at a rent plainly exceeding the known value.

Spurrier v.  
Mayoss, F.  
Vesey's Rep.  
529, in Chan.  
12 July, 1792.  
S. C. 4 Bro.  
C. C. 28.

† Sect. 40. But where A. agrees to pay B., for the purchase of two houses, the sum of £430:10s., and that £200 of the money should be paid immediately, and the remainder at Michaelmas, with interest thereon at five *per cent.*, and the houses being unoccupied, A. was to be let into immediate possession; but that if the said balance should not be paid at Michaelmas, A. agreed to pay, in lieu of interest on the same, a clear rent of £42 a year, out of which B. was to permit interest at the rate of five *per cent.* in respect of the sum first paid to him to be deducted; this agreement was adjudged not be usurious.

3 Keble, 142.  
Con. Noy, 2.

Sect. 41. A second bond made after the forfeiture of a former, and conditioned for the receipt of interest according to the penalty of the forfeited bond, is as much within the statute as if it had been made before the forfeiture; for if such a practice should be allowed, nothing could be more easy than to elude the statute; and though the whole penalty be due in strictness to the obligee, yet the true principal debt is in conscience no greater after the forfeiture of the bond than it was before.

Walton v. Shel-  
ley, 1 Term  
Rep. 296.

† Sect. 42. So also if a promissory note, originally given upon a usurious consideration, be indorsed over to A., B. gives A. a bond in consideration of his delivering up the note of hand, it seems admitted, that, on the bond being put in suit, and the statute of Usury pleaded, the defendant may give evidence that the promissory note was originally given on a usurious consideration, and thereby destroy the validity of the bond.

Sect. 43. But although the deed, securing the repayment of the money borrowed, be drawn pursuant to the statute, yet if the whole of the principal be not fairly advanced, it is void.

† Sect.

† *Sect. 44.* As where A. having occasion for a sum of money applied to B. and offered to secure the sum on a mortgage, and B. said that all his money was in the funds, and that to sell out stock at that time would be a considerable loss, stock then standing at 73, but that if A. would take the stock at 75, he should have the sum he wanted, and accordingly received £1500 in stock valued at 75, which he sold out the same day at 72½, that being the then market price, it was held, that the executor of the mortgagee could not maintain an ejectment on the mortgage deed.

Davidson v. Barnard Pitt, Easter Term, 33 Geo. 3, Espin. N. P. 11.

† *Sect. 45.* So also if the discounteer of a bill of exchange make the holder take goods at a higher price than they are worth upon a fair estimate, it is usury; for a party by substituting goods instead of money shall not, by colour of their pretended value, take above legal interest, and evade the statute.

Pratt v. Willey, Sit. Mich. 34 Geo. 3, Espin. N. P. 40.

† *Sect. 46.* So if A. indorse a note of £200 to B. who advances A. one hundred and ninety-seven pounds three months before it is due, and at the end of the three months takes another note on advancing £3 for other three months, this is usury.

Massa v. Dowling, Stra. 1243.

† *Sect. 47.* So also where A. lent B. several sums of money on mortgage, and B. having occasion for more, A. advanced him £1900 by selling out £1000 South-Sea Annuities, which at that time were under par, and sold at a loss of £76 upon the whole, and paid him the money for which they sold, and took a mortgage from him for £1000, at five *per cent.* interest, with a covenant to reduce the interest to four *per cent.* if paid within such a time, it was held usurious.

Moor v. Battie, Amb. Rep. 371.

† *Sect. 48.* So where upon a negociation for a loan of money the lender pretends that is inconvenient to him to advance money, but furnishes the borrower with goods to the amount of the sum wanted, and the goods are afterwards sold by the intervention of a broker recommended by the lender, and a security taken by the lender, payable at a future day, for a sum far exceeding the value of the goods, and five *per cent.* interest, this is a usurious loan, and the security is void.

Lowe v. Waller, Dougl. 736.

† *Sect. 49.* It seems also, that if A. in consideration of advancing £45, for which he takes the borrower's note of hand, payable on demand, stipulates to have half of the profits upon a resale of certain goods intended to be purchased by the borrower with the money, and two hours' after the purchase demands payment of the note, and the same night puts a person into possession jointly for himself and the borrower, and the goods upon a resale produce only a neat profit of five pounds, this is a usurious transaction.

Jestens v. Brook, Cowp. 793.

† *Sect. 50.* To incur the penalties of usury there must be, First, a corrupt contract between the parties; Secondly, monies or other things lent; Thirdly, above five *per cent.* received by the lender for forbearance; and wherever these three matters concur, the offence of usury is completed, although no time is mentioned with respect to repayment of the principal, for the offence may be committed though the principal money may never be paid.

Lloyd qui tam Williams, 3 Wils. 250 to 262.

† *Sect.*

Dougl. 225.  
2 Bl. Rep. 796.

† *Sect. 51.* For although the very contract avoids the security, yet the treble value is not forfeited until something be *taken* above the legal rate of interest; and therefore, where G. borrowed a hundred pounds of B. on his bond, conditioned to repay the same at six months, with five *per cent. per annum*, and gave two guineas to B. at the time the money was advanced as a premium for the loan, and the principal and two pounds ten shillings interest were repaid at the end of six months, it was held, that the bond was void, but that the usury was not committed until the half year's interest was received, for the penalty is only incurred by "taking, accepting, and receiving more than legal interest."

Johnston *qui*  
*tam* Picker,  
B. R. Easter  
Term, 1783.

† *Sect. 52.* So where A. gave credit to B. for jewels to a certain amount, but B. not being able to raise money on them desired that A. would exchange them for old plate; and A. said that old plate was as good as money, and accordingly gave him in money the value of as much old plate as was less by a hundred pounds than what the jewels had been sold for, for the whole amount of which B. was to stand indebted; it was held that A. was not liable to the penalty of the statute.

Espinasse N.P.  
41.

1 Buls. 17. 20.  
Yel. 30. 31.  
Noy, 171.  
2 Keble, 690.  
Con. 1 Leon. 96.

*Sect. 53.* The receipt of interest before the time when it is with strictness due, being voluntarily paid by the debtor, for the greater convenience of the creditor, or for any other such like consideration, without any manner of corrupt practice, or any previous agreement of this kind at the making of the first contract, does not make the party liable to the forfeiture of the treble value.

Noy, 37.  
1 Leon. 96.

*Sect. 54.* In an assurance for the payment of fifty shillings for the use of one hundred pounds for six months, the computation shall be by calendar and not by lunar months, because by the latter the interest would exceed the rate allowed by the statute.

In what way the offender may be proceeded against.

† *Sect. 55.* By 12 Ann. c. 16. s. 2. it is enacted, "That the one moiety of all the forfeitures shall be to the queen, and the other moiety to him or them that will sue for the same, in the same county where the several offences are committed, and not elsewhere, by action of debt, bill, plaint, or information, in which noessoign, wager of law, or protection, shall be allowed."

† *Sect. 56.* But by 31 Eliz. c. 5. "All actions, suits, bills, indictments, or informations, on any penal statute where the penalty is limited to the queen only, shall be brought within two years after the offence committed, and when limited to the queen and any other person, within one year next after the offence committed; but in default thereof, then the same may be brought for the queen at any time within two years after that year ended."

Rex v. Upton,  
Stra. 816.

† *Sect. 57.* It seems, that an indictment will lie on the 12 Ann. c. 16. although that mode of proceeding is not mentioned in the statute.

† *Sect.*

† *Sect. 58.* And it is decided, that an action may be brought for the penalty, though more than a year has elapsed since the payment of the premium, if it be not a year after what has been paid exceeded legal interest. *Fisher v. Beasley, Doug. 235.*

† *Sect. 59.* Also an action will lie to recover back what has been paid on a usurious contract above the principal and legal interest. *Low v. Walter, Dougl. 693. notes.*

† *Sect. 60.* But it is decided, that a person who has pledged goods as a security for money borrowed on a usurious contract, cannot maintain *trover* against the lender, unless he has paid, or tendered to pay, the sum actually advanced, with the legal interest due thereon. *Fitzroy v. Gwillim, 1 T. Rep. 153.*

What is required in the pleadings.

*Sect. 61.* A fine (a) levied, or a judgment suffered, in pursuance of a usurious contract, may be avoided by an averment of the corrupt agreement, as well as any common specialty or parol contract. *(a) 3 Co. 80. 9 Co. 36. 1 Jon 203. 1 Roll. 41, 42. 2 Ven. 83. 108. 2 Leon. 166. Con. C. Eliz. 25. 588. 1 Sid. 182.*

*Sect. 64.* In an *assumpsit* (b), if it appear, either upon the evidence or from the plaintiff's own express shewing in his declaration, that the contract was usurious, he cannot recover. *(b) Salk. 22. Skin. 411, 412. Lut. 273. Cro. Eliz 588.*

Or the court of chancery may direct an issue to try the usurious contract. *Cowper, 728. Strange, 1043. B. R. II. 233.*

*Sect. 63.* But a specialty cannot be avoided by usury appearing on evidence or on the face of the condition, but it must be pleaded.

*Sect. 64.* In pleading a usurious contract by way of bar to an action, you must set forth the whole matter specially, because it lay within your own privacy; but an information on the statute for making such a contract, it is sufficient to set forth the corrupt bargain generally, because matters of this kind are supposed to be privily transacted, and such information may be brought by a stranger. *1 And. 49. 1 Sid. 285. 3 Modern. 35. 1 Keble, 629. Noy, 113. Cro. Jac. 440. Vide C. Car. 501. Precedents.*

*2 Ven. 81. Lutw. 468. Co. En. 168. Clift. 185. Bro. V. M. 255. Jones, 113.*

*Sect. 66.* (c) In every information on the statute of Usury, it is necessary expressly to set forth the place where the corrupt bargain was made. *(c) 1 Leon. 96, 97.*

† *Sect. 67.* It is also necessary to lay the time precisely; and therefore, where a security was dated on the 14th, but not signed till the 16th, and it was laid on the 14th, it was held bad. *Cowp. 671, 672.*

*Sect. 68.* If a usurious contract in the county of D. be pleaded in bar to an action on a bond said to be made in the county of E. the trial shall be in the county of D. because the ground of the matter is the usurious contract, and the bond is confessed by the plea. *1 Leon. 148, 149.*

† *Sect. 69.* If A. by deed executed in London, for securing the repayment of money lent to B. is appointed receiver of B.'s rents in Middlesex, with a pretended salary which enables him to retain usurious interest, and he accordingly receives the rents the *Scott v. Brest, 2 Term. Rep. 238.*

in Middlesex, but settles the account in London, and *there* pays the balance on which the usurious interest is allowed, the offence is completed in London, and the *venu* in a *qui tam* action for the penalty is properly laid there.

Richards v.  
Brown, Dougl.  
114.

† *Sect. 70.* In an action of usury, a variance between the name of the attorney in the warrant and in the declaration may be amended by altering the name in the warrant to that in the declaration, although after error brought and the variance assigned for error; but sums and dates in such declaration cannot be amended after the time limited for trying the action is expired.

Dougl. 114.  
*notis.*

† *Sect. 71.* A corrupt agreement for the forbearance of money till one or the other of two days, at the option of the borrower, must be pleaded, according to the fact, in the alternative; and if it be stated as an absolute forbearance until one of those days, the evidence will not support the plea.

Tate v. Wel-  
lings, 3 Term  
Rep. 351.

† *Sect. 72.* He, who hath agreed to pay money upon a usurious contract, shall not be admitted to give evidence upon an information against the usurer, unless he have paid off the whole debt; for by such means a man might avoid his own act and deed.

Hardres, 331.  
Co. Lit. 6 b.  
2 Roll. 685.  
2 Raym. 191.  
B. 2. c. 46. s. 24.  
1 Vent. 49.  
1 Salk. 285.

† *Sect. 73.* But in an action on the statute where money was usuriously lent on the pledge of jewels greatly exceeding in value the principal sum, and the declaration only stated the corrupt bargain and loan, without noticing any bond, assurance, or contract, whereupon or whereby usury was received or taken, it was determined, on great deliberation, that the borrower is a competent witness, not only to prove the repayment of the principal money, but also the usurious transaction.

Abrahams *qui tam*  
v. Brown,  
4 Burr. 2251.

† *Sect. 74.* But in a *qui tam* action of usury against an assignee of a bankrupt for taking usurious interest on a loan of money to the bankrupt before his bankruptcy, the bankrupt is not a competent witness to prove the offence, if he has not obtained his certificate, or repaid the money, notwithstanding he is ready to release to his assignees all benefit which may arise from the discharge of this debt in particular, and all claim and allowance of surplus in general, and notwithstanding he has proved his demand for the money lent, under the commission.

Masters *qui tam*  
v. Drayton,  
2 Term Rep.  
496.

† *Sect. 75.* But it has been decided, that if A. the indorsee of a promissory note, indorse it to B, and C. gives a bond to B. in consideration of his delivering up this note, A. is not a competent witness, in an action of debt on the bond to which the statute of usury is pleaded, to prove that the consideration for the note was usurious; for though there is no objection to his competency in point of interest, because by destroying the bond he sets up the note, yet it is a rule of law, that no party who has signed a paper or deed shall ever be permitted to give testimony to invalidate the instrument which he has so signed.

Walton v. Shelly,  
1 Term  
Rep. 296.

† *Sect. 76.* An information for an usurious contract on a loan of money cannot be supported by evidence of such a contract on a bargain concerning wares sold.

1 Leon. 95, 96.  
2 Strange, 1243.  
1043.  
1 Wilson, 286.

† *Sect. 77.* But in an action for the penalty, if the declaration state a specific sum of money to have been lent, as the loan in which

Barbe *qui tam*  
v. Parker, 1 H.  
Bl. Rep. 283.

which the usury consisted, evidence that the loan was part in money and the rest in goods of a known value, which the party receiving the loan agreed to take as cash, will support the declaration.

† *Sect. 78.* But if a plaintiff declare upon a corrupt contract on the twenty-first of December, 1774, giving day of payment to the twenty-third of December, 1776, evidence of a contract on the twenty-third of December, 1774, for two years is a fatal variance. *Carlisle v. Tears*, Cowp. 671.

† *Sect. 79.* By 12 Ann. c. 16. s. 2. it is enacted, "That all and every scrivener and scriveners, broker and brokers, solicitor and solicitors, driver and drivers of bargains for contracts, who shall after the said nine-and-twentieth day of September take or receive, directly or indirectly, any sum or sums of money, or other reward or thing, for brokage, solicting, driving, or procuring the loan, or forbearing of any sum or sums of money, over and above the rate or value of five shillings for the loan or forbearing of one hundred pounds for a year, and so rateably, or above twelve-pence, over and above the stamp duties, for making or renewing of the bond or bill for loan or forbearing thereof, or for any counterbond or bill concerning the same, shall forfeit for every such offence twenty pounds, with costs of suit, and suffer imprisonment for half a year; the one moiety of all which forfeitures to the queen's most excellent majesty, her heirs and successors, and the other moiety to him or them that will sue for the same, in the same county where the several offences are committed, and not elsewhere, by action of debt, bill, plaint, or information, in which no essoin, wager of law, or protection, shall be allowed." *No scrivener, &c. shall take above 5s. for 100l. for a year, for brokage, &c. nor above 12d. besides stamp-duties, for making or renewing any bond, &c.*

† *Sect. 80.* And it is said, that if a scrivener make a contract for more than five shillings for procuring the loan of a hundred pounds, that such contract is void, though the statute itself doth not mention that it shall be so. *Bartlet v. Vinor*, Carth. 251.

† *Sect. 81.* By 53 Geo. 3. c. 141. s. 9. it is enacted, "That all and every solicitors and solicitor, scriveners and scrivener, brokers and broker, and other person or persons, who, from and after the passing of this act, shall ask, demand, accept or receive, directly or indirectly, any sum or sums of money, or any other kind of gratuity or reward, for the soliciting or procuring the loan, and for the brokerage of any money that shall be actually and *bonâ fide* advanced and paid as and for the price or consideration of any such annuity or rent-charge, over and above the sum of ten shillings for every one hundred pounds so actually and *bonâ fide* advanced and paid, shall be deemed and adjudged guilty of a misdemeanor; and being lawfully convicted of such offence in any court of assize, oyer and terminer, or general gaol delivery, shall and may, for every such offence, be punished by fine and imprisonment, or one of them, at the discretion of the court; and that the person or persons who shall have paid, or given any sum or sums of money, gratuity, or reward, shall be deemed a competent witness or witnesses to prove the same." *Solicitors, &c. who take more than 10s. per 100l. for procuring money for annuities, &c. punished, &c.*

By



By a former sect. (8) of this, all contracts for annuities with infants are declared void, any attempt to confirm the same after the age of twenty-one years notwithstanding, "and that if any person shall either in person, by letter, agent, or otherwise howsoever, procure, engage, solicit, or ask any person being under the age of twenty-one years, to grant, or attempt to grant, any annuity or rent charge, or to execute any bond, deed, or other instrument, for securing the same, or shall advance or procure, or treat for, any money to be advanced to any person under the age of twenty-one years upon consideration of any annuity or rent charge, to be secured or granted by such infant, after he or she shall have attained his or her age of twenty-one years, or shall induce, solicit, or procure any infant upon any treaty or transaction for money advanced, or to be advanced, to make oath, or give his or her word of honour or solemn promise, that he or she will not plead infancy, or make any other defence against the demand of any such annuity or rent charge, or the repayment of the money advanced to him or her when under age, or that when he or she comes of age, he or she will confirm or ratify or any way substantiate such annuity or rent charge, every such person shall be guilty of a misdemeanor, and being thereof lawfully convicted in any court of assize, oyer and terminer, or general gaol-delivery, shall and may be punished for the said offence by fine, imprisonment, or other corporal punishment, as the court shall think fit to award."

### 8. *Monopolies.*

A monopoly is an allowance by the king to a particular person or persons of the sole buying, selling, making, working, or using of any thing, whereby the subject in general is restrained from the freedom of manufacturing or trading which he had before. Monopoly differs from ingrossing only in this, that monopoly is by patent from the king, and ingrossing by the act of the subject between party and party.

But for the better understanding of this subject, I shall consider,

1. In what cases monopolies are illegal.
2. How monopolies may be established or suppressed.
3. In what cases the king may grant letters patent.
4. How far authors and booksellers have an exclusive copyright in literary works.
5. How far engravers have an exclusive right in engravings.
6. How far calico printers have an exclusive right in their patterns.

As to the FIRST POINT, viz. In what cases monopolies are illegal.

Sect. 1. It is said, that all grants of this kind relating to any known trade are made void by the common law, as being against the freedom of trade, and discouraging labour and industry, and restraining persons from getting an honest livelihood by a lawful employment, and putting it in the power of particular persons to set

set what prices they please on a commodity; all which are manifest inconveniences to the public. (1)

*Sect. 2.* And upon this ground it hath been (a) resolved, that the king's grant to any particular corporation of the sole importation of any merchandize is void, whether such merchandize be prohibited by statute or not. (2)

(a) 2 R. Abr. 214.  
3 Inst. 182.  
2 Inst. 61.

*Sect. 3.* And for the like reasons it hath been resolved, that the grant of the sole (b) ingrossing of wills, and inventories, in a spiritual court, or of the sole (c) making of bills, pleas, and writs in a court of law, to any particular person, is void.

(b) 2 R. Abr. 214.  
(c) 1 Jones, 231.  
2 R. Abr. 214.  
3 Mod. 75.  
Vern. 120.

*Sect. 4.* Also it hath been adjudged, that the king's grant of the sole making, importing, and selling of (d) playing cards, is void, notwithstanding the pretence that the playing with them is a matter merely of pleasure and recreation, and often much abused, and therefore proper to be restrained; for since the playing with them is in itself lawful and innocent, and the making of them an honest and laborious trade, there is no more reason why any subject should be hindered from getting his livelihood by this than by any other employment.

10 Mod. 107.  
131. 133.  
(d) 11 Co. 84, 85, &c.  
Mod. 671.  
Noy, 173, &c.  
2 Inst. 47.  
Vide 2 Atk. 484.

*Sect. 5.* Also it is holden, that the procuring or making use of an unlawful monopoly is further restrained by the common law, by subjecting those who are guilty thereof to a fine and imprisonment for the offence, as being *malum in se*, and contrary to the ancient and fundamental laws of the kingdom. And it is said, that there are precedents of prosecutions of this kind in former days; but I cannot find any modern instance thereof.

Inst. 181.  
Inst. 17. 62.

*Sect. 6.* By 21 Jac. 1. c. 3. "All monopolies, and all commissions, grants, licenses, charters and letters patents to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of any thing within this realm, or Wales, or of any other monopolies, and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters whatsoever any way tending to the instituting, strengthening, furthering, or countenancing of the same, or any of them, are altogether contrary to the laws of this realm, and so are and shall be utterly void, and of none effect, and in nowise to be put in ure or execution."

*Sect. 7.* And by 21 Jac. 1. c. 3. s. 2. "All persons, bodies politic and corporate, whatsoever, shall be disabled and incapable to have, use, exercise, or put in ure any monopoly, or any such commission, grant, or license, &c. or other thing tending as aforesaid, for any liberty, power, or faculty, grounded or pretended to be grounded upon them, or any of them."

*Sect.*

(1) The king, and none but the king, (Skinner, 224.) by his charter, may constitute fraternities for the management of foreign and domestic trade, 8 Co. 129, who may make by-laws in restraint, if they be for the regulation of trade. See Com. Dig. By-law, b. 3. c. 3. Trade, B. D. 1 D. 4. 10 Mod. 139.

(2) Hence also it seems, that the king's charter,

empowering particular persons to trade to and from such a place is void, so far as it gives such persons an exclusive right of trading and debarring all others: and it seems now agreed, that nothing can exclude a subject from trade but an act of parliament. Ray, 489. Chan. Ca. 165. Vernon, 127. Skinner, 165. 3 Mod. 126. 3 Bacon, 627. c. 3. Trade, 4.

*Sect. 8.* By 21 Jac. 1. c. 3. s. 7. "The said act shall not extend to any grant, privilege, power, or authority whatsoever before the said act, made, granted, allowed, or confirmed by any act of parliament, so long as the same shall continue in force."

*Sect. 9.* And by 21 Jac. 1. c. 3. s. 9. "Nothing in the said act contained shall be in any wise prejudicial to any city, borough, or town corporate within this realm, concerning any grants, charters, or letters patents to them made, or concerning any custom used by or within them, or unto any corporations, companies, or fellowships, of any art, trade, occupation, or mystery, or to any companies or societies of merchants within this realm, erected for the maintenance, enlargement, or ordering of any trade or merchandize; but that the same charters, customs, corporations, &c. and their liberties and immunities shall be of such force and effect as they were before the making of the said act, and of none other."

*Sect. 10.* By 21 Jac. 1. c. 3. s. 10. "Nothing in the said act shall extend to any commission, grants, or letters patents, concerning the digging, making, or compounding of saltpetre, or gunpowder, or the casting or making of ordnance, or shot for ordnance; nor to any grant or letters patents of any office erected before the making of the said statute, and then in being, and put in execution, other than such offices as had been decreed by proclamation; but that all such grants, &c. shall be of the like force and effect, and no other, as if the said act had never been made."

*Sect. 11.* But it is enacted by 16 Car. 1. c. 21. "That it shall be lawful for all persons, as well strangers as natural-born subjects, to import any quantities of gunpowder whatsoever, paying such customs and duties for the same as by parliament shall be limited; and that it shall be lawful for all his majesty's subjects of this his realm of England, to make and sell any quantities of gunpowder at his pleasure, and also to bring into this kingdom any quantities of saltpetre, brimstone, or any other materials for the making of gunpowder: and that if any person shall put in execution any letters patents, proclamation, edict, act, order, warrant, restraint, or other inhibition whatsoever, whereby the importation of gunpowder, saltpetre, brimstone or other the materials aforementioned, shall be anywise prohibited or restrained, he shall incur *præmunire*."

*Sect. 12.* By 21 Jac. 1. c. 3. s. 11, 12. "Nothing in the said act contained shall extend to any commission or grant concerning the digging, compounding, or making of alum, or alum mines, &c. nor concerning the licensing of the keeping of any tavern or selling of wines, to be spent in the mansion-house, or other place in the tenure or occupation of the party selling the same;" and a further provision is made in the latter part of the statute for some particular grants to particular corporations and persons, as Newcastle upon Tyne, &c.

3 Inst. 185.

*Sect. 13.* But it is said, that the said clause relating to alum was

was needless, because all such mines belong of course to the persons in whose grounds they are, and therefore no privilege concerning them can be granted but in the king's own ground.

As to the SECOND POINT, viz. In what manner illegal monopolies may be suppressed.

*Sect. 14.* By 21 Jac. 1. c. 3. s. 3. "All monopolies, and all such commissions, grants, and licenses, &c. and all other things tending as aforesaid, and the force and validity of them, ought to be, and shall be examined, heard, tried, and determined, by and according to the common laws of this realm, and not otherwise."

*Sect. 15.* In the construction of this clause it hath been holden, <sup>3 Inst. 182, 183.</sup> that all matters of this kind ought to be tried in the courts of <sup>2 Atk. 484.</sup> common law only, and not at the council table, or in the court of chancery, or any other court of like nature. (3)

*Sect. 16.* And by 21 Jac. 1. c. 3. s. 4. "If any person shall be hindered, grieved, disturbed, disquieted, or his goods or chattels any way seized, attached, distrained, taken, carried away, or detained, by occasion or pretext of any monopoly, or of any such commission, grant, or license, &c. or other matter or thing tending as aforesaid, and will sue to be relieved in any of the premises, he shall have his remedy for the same at the common law, by action grounded on the said statute, to be heard and determined in the king's bench, common pleas, or exchequer, against the party by whom he shall be so hindered or grieved, &c. or by whom his goods shall be so seized or attached, &c. wherein every such person which shall be so hindered or grieved, &c. or whose goods shall be so seized or attached, &c. shall recover three times so much as the damage which he sustained by means of such hinderance, &c. and double costs; and in such suits, or for the staying or delaying thereof, no essoin, protection, wager of law, aid, prayer, privilege, injunction, or order of restraint, shall be in anywise prayed, granted, admitted, or allowed, nor any more than one imparlance: and if any person shall, after notice that the action depending is grounded upon the said statute, cause or procure any action at the common law grounded thereon to be stayed or delayed before judgment, by colour or means of any order, warrant, power, or authority, save only of the court wherein such action shall be depending; or after judgment shall cause or procure the execution to be stayed or delayed, by colour or means of any order, warrant, power or authority, save only by writ of error or attain, that then the said person or persons so offending shall incur a *præmunire*."

*Sect.*

(3) Chancery will never establish a right claimed under a charter from the crown, till there has been an action at law to try the right. 2 Atkyns, 484. But it is the highest point of the Lord Chancellor's jurisdiction to cancel the king's letters patent under the Great Seal. 4 Inst. 88. And where a patent is granted to the prejudice of the subject, the king

of right is to permit him upon his petition to use his name for the repeal of it in a *scire facias* at the king's suit. 3 Lev. 221. Dyer, 197. 8 Coke, Prince's Case, 11 Coke, 74. 2 Ventris, 344. 6 Mod. 229. But questions concerning the effect and extent of letters patents can only be tried in the king's courts. Cowp. 173.

3 Inst. 183.

*Sect. 17.* It is said, that the first branch of this last clause, relating to the delaying of causes of this kind before judgment, not only extendeth to the privy council, chancery, exchequer chamber, and the like, but also to those who shall procure any warrant from the king for such purpose; and it is said, that the latter branch relating to the delaying of execution after judgment extendeth even to the judges of the court where the cause is depending.

As to the *THIRD POINT*, viz. In what cases the king may grant letters patent for the sole making and vending of any manufacture, &c.

1 Mod. 256.

3 Keb. 792.

3 Mod. 75.

Lucas, 106, 107.

*Sect. 18.* It seems to be the better opinion, that the king may grant to particular persons the sole use of some particular employments (as of printing the holy scriptures and law books, &c.) whereof an unrestrained liberty might be of dangerous consequences.

† *Sect. 19.* And by 21 Jac. 1. c. 3. s. 10. it is provided, "That the restraints of that statute shall not extend to any letters patent or grants of privilege concerning printing."

Noy, 182, 183.

*Sect. 20.* It seemeth clear, that the king may, for a reasonable time, make a good grant to any one of the sole use of any art invented or first brought into the realm by the grantee.

*Sect. 21.* Also by 21 Jac. 1. c. 3. s. 6. "No declaration in the statute mentioned shall extend to letters patents and grants of privilege for the term of fourteen years, or under, of the sole working or making of any manner of new manufactures within this realm, to the true and first inventor and inventors of such manufactures, which others, at the time of making such letters patents and grants, shall not use, so as also they be not contrary to the law, nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient; the said fourteen years to be accounted from the date of the first letters patents, or grant of such privilege, but that the same shall be of such force as they should be if the said act had never been made, and of none other."

3 Inst. 184.

*Sect. 22.* It hath been resolved, that no new invention concerning the working of any manufacture is within the meaning of this exception, unless it be substantially new, and not barely an additional improvement of an old one.

Edgbury v. Stephens, 1 Salk. 447.

*Sect. 23.* But it hath been resolved, that a patent granted for an old invention imported from abroad is good, provided it be entirely new in this kingdom.

3 Inst. 184.  
10 Mod. 181.

*Sect. 24.* Also it hath been holden, that a new invention to do as much work in a day by an engine, as formerly used to employ many

many hands, is not within the said exception, because it is inconvenient in turning so many labouring men to idleness. (a)

(a) But see Arkwright's case, *contra*. 3 Inst. 184. Godb. 125.

*Sect. 25.* Also it seemeth clear, that no old manufacture in use before can be prohibited in any grant of the sole use of any such new invention.

*Sect. 26.* And it is decided, that a patent is void if the specification is ambiguous, or gives directions which tend to mislead the public.

Turner v. Winter, 1 T. R. 602.

As to the **FOURTH POINT**, *viz.* How far authors and book-sellers have an exclusive copy-right in literary works, I shall consider,

1. For what length of time such copy-right may continue.
2. How far the universities are entitled to copy-right.
3. In what manner copies are to be entered at Stationers' Hall.
4. In what manner such copy-right may be assigned.
5. What shall be considered literary works, and what as pirating a copy-right.
6. What remedies are given to preserve this right.

As to the first particular, *viz.* For what length of time such copy-right may continue.

† *Sect. 27.* Copy-right was first given by 8 Ann. c. 19. by which it is enacted, "The author of any book or books, and "his assignee or assigns, shall have the sole liberty of printing and "reprinting such book and books for the term of *fourteen years*, "to commence from the day of first publishing the same, and no "longer: provided always, that after the expiration of the said "term of *fourteen years*, the sole right of printing or disposing of "copies shall return to the authors thereof, if they are then living, "for another term of *fourteen years*."

This term of fourteen years was extended by the statute of 54 Geo. 3. c. 156. s. 4., by which it is enacted, That the author of any book, or his assignee, "shall have the sole liberty of "printing and reprinting such book or books for the full term of "*twenty-eight years*, to commence from the day of first publishing, "and also if the author shall be living at the end of that period, "for the residue of his natural life."

† *Sect. 28.* Upon the former stat. it has been decided, upon great argument and deliberation, that the sole and exclusive copy-right in perpetuity which was conceived to remain in authors, or their assigns,

The case of Miller v. Taylor, 4 Burr. 2303 to 2417.

assigns, by the common law, after the publication of their works, is taken away by the above statute, and that they have now no other right than that which the statute confers.

*Ld. Hardwicke,*  
*2 Atk. 143.*

† *Sect. 29.* It is said that this statute, being intended to secure the property of books in the authors themselves, or the purchasers of the copy, as some recompense for their pains and labour in writing such works as may be useful to the learned world, shall not be considered as establishing a monopoly, and therefore ought to receive a liberal construction.

As to the second particular, *viz.* How far the universities are intitled to copy-right.

† *Sect. 30.* By 8 Ann. c. 19. s. 9. it is provided, “That nothing in the act contained shall extend, or be construed to extend, either to prejudice or confirm any right that the universities of Oxford and Cambridge, or the four universities in Scotland, or any of them, or any person or persons have or claim to have to the printing or reprinting any book or copy already printed or hereafter to be printed.”

*Universities, &c.*  
*to have, for ever,*  
*the sole right of*  
*printing, &c.*

*Sect. 31.* And by 15 Geo. 3. c. 53. “The said universities of England and Scotland, and the colleges of Eton, Westminster, and Winchester respectively, shall, at their several presses, have, for ever, the sole liberty of printing and reprinting all such books as shall at any time heretofore have been, or (having not been heretofore published or assigned) shall at any time hereafter be bequeathed, or otherwise given by the author or authors of the same respectively, or the representatives of such author or authors, to or in trust for the said universities, or to or in trust for any college or house of learning within the same, or to or in trust for the said four universities in Scotland, or to or in trust for the said colleges of Eton, Westminster, and Winchester, or any of them, for the purposes aforesaid, unless the same shall have been bequeathed or given, or shall hereafter be bequeathed or given, for any term of years, or other limited term; any law or usage to the contrary hereof in any wise notwithstanding.”

*Persons print-*  
*ing or selling*  
*such books shall*  
*forfeit the same,*  
*and also 1*l.* for*  
*every sheet;*

*Sect. 32.* By 15 Geo. 3. c. 53. s. 2. it is further enacted, “That if any bookseller, printer, or other person whatsoever, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books; or, knowing the same to be so printed or reprinted, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books; then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the university, college, or house of learning, respectively, to whom the copy of such book or books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste paper of them; and further, that every such offender or offenders shall forfeit one penny

“ penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the king’s most excellent majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same; to be recovered in any of his majesty’s courts of record at Westminster, or in the court of session in Scotland, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.”

one moiety to his majesty, and the other to the prosecutor.

† Sect. 33. But by 15 Geo. 3. c. 53. s. 3. it is provided, “ That nothing in this act shall extend to grant any exclusive right, otherwise than so long as the books or copies belonging to the said universities or colleges are printed only at their own printing presses within the said universities or colleges respectively, and for their sole benefit and advantage; and that if any university or college shall delegate, grant, lease, or sell their copyrights, or exclusive rights of printing the books hereby granted, or any part thereof, or shall allow, permit, or authorize any person or persons, or bodies corporate, to print or reprint the same, that then the privileges hereby granted are to become void and of no effect, in the same manner as if this act had not been made; but the said universities and colleges as aforesaid, shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors now may do under the provisions of the statute of the eighth year of her majesty queen Anne.”

† Sect. 34. By 15 Geo. 3. c. 53. s. 4. “ And whereas many persons may through ignorance offend against this act, unless some provision be made whereby the property of every such book as is intended by this act to be secured to the said universities, colleges, and houses of learning within the same, and to the said universities in Scotland, and to the respective colleges of Eton, Westminster, and Winchester, may be ascertained and known; be it therefore enacted by the authority aforesaid, “ That nothing in this act contained shall be construed to extend “ to subject any bookseller, printer, or other person whatsoever, “ to the forfeitures or penalties herein mentioned, for or by reason of the printing or reprinting, importing or exposing to sale, “ any book or books, unless the title to the copy of such book or “ books which has or have been already bequeathed or given to any “ of the said universities or colleges aforesaid, be entered in the register-book of the company of stationers kept for that purpose, in “ such manner as hath been usual, on or before the twenty-fourth “ day of June, one thousand seven hundred and seventy-five; “ and of all and every such book or books as may or shall hereafter be bequeathed or given as aforesaid, be entered in such “ register within the space of two months after any such bequest “ or gift shall have come to the knowledge of the vice chancellors “ of the said universities, or heads of houses and colleges of “ learning, or of the principal of any of the said four universities respectively ;

No person subject to penalties unless entered, before, &c. Books must be entered within two months after bequest.



"respectively; for every of which entries so to be made as aforesaid, the sum of sixpence shall be paid, and no more; which said register-book shall and may, at all seasonable and convenient times, be referred to, and inspected by any bookseller, printer, or other person, without any fee or reward; and the clerk of the said company of stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence."

If clerk neglect to make entry, &c. proprietor to have like benefit, &c.

† Sect. 35. By 15 Geo. 3. c. 53. s. 5. it is further enacted, "That if the clerk of the said company of stationers for the time being shall refuse or neglect to register, or make such entry or entries, or to give such certificate, being thereunto required by the agent of either of the said universities or colleges aforesaid, lawfully authorized for that purpose, then either of the said universities or colleges aforesaid, being the proprietor of such copy-right or copy-rights as aforesaid (notice being first given of such refusal by advertisement in the Gazette), shall have the like benefits as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall, for every such offence, forfeit twenty pounds to the proprietor or proprietors of every such copy-right; to be recovered in any of his majesty's courts of record at Westminster, or in the court of session in Scotland, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, protection, or more than one imparlance shall be allowed."

Limitation of actions.

General issue.

† Sect. 36. And by 15 Geo. 3. c. 53. s. 7. it is further enacted, "That if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict, or if the same shall be brought in the court of session in Scotland, a judgment be given for the defendant, or the plaintiff become nonsuited, and discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath."

As to the third particular, *viz.* In what manner copies are to be entered at Stationers'-Hall.

Copies of books to be entered before publication in the register-book of the company of stationers; which may be inspected at any time without fee.

† Sect. 37. By 8 Ann. c. 19. s. 2. "And whereas many persons may, through ignorance, offend against this act, unless some provision be made whereby the property in every such book as is intended by this act to be secured to the proprietor or proprietors thereof may be ascertained, as likewise the consent of such proprietor or proprietors for the printing or reprinting of such book or books may from time to time be known;" be it therefore further enacted, "That nothing in this act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties therein mentioned,

mentioned, for or by reason of the printing or reprinting of any book or books without such consent as aforesaid, unless the title to the copy of such book or books hereafter published, shall, before such publication, be entered in the register-book of the company of stationers, in such manner as hath been usual, which register-book shall at all times be kept at the hall of the said company, and unless such consent of the proprietor or proprietors be in like manner entered as aforesaid, for every of which several entries sixpence shall be paid, and no more; which said register-book may, at all seasonable and convenient times, be resorted to and inspected by any bookseller, printer, or other person, for the purposes beforementioned, without any fee or reward; and the clerk of the said company of stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence."

Clerk of the company to give a certificate of such entry.

† Sect. 38. By 8 Ann. c. 19. s. 3. it is provided, "That if the clerk of the said company of stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate, being thereunto required by the author or proprietor of such copy or copies, in the presence of two or more credible witnesses, that then such person and persons so refusing, notice being first duly given of such refusal, by an advertisement in the Gazette, shall have the like benefit as if such entry or entries, certificate or certificates had been duly made and given; and that the clerks so refusing shall, for any such offence, forfeit to the proprietor of such copy or copies the sum of twenty pounds, to be recovered in any of her majesty's courts of record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance shall be allowed."

Penalty of the clerk refusing so to do.

By the above in part recited statute of 8 Anne, c. 19, certain regulations were enacted with respect to entering new works at Stationers' Hall, and delivering copies for the use of certain public libraries, which, by sect. 5., the publisher was directed to do, and the warehouse-keeper was to deliver them to the respective libraries, under certain penalties; these were repealed by the last-mentioned statute 54 Geo. 3. c. 156, and other provisions substituted in lieu thereof: for by sect. 2. of that statute, it is enacted, "That eleven printed copies of the whole of every book, and of every volume thereof, upon the paper upon which the largest number or impression of such book shall be printed for sale, together with all maps and prints belonging thereto, which, after the passing of this act, shall be printed and published, on demand thereof being made in writing to, or left at the place of abode of the publisher or publishers thereof, at any time within twelve months next after the publication thereof, under the hand of the warehouse-keeper of the Company of Stationers, or the librarian, or other person thereto authorized by the persons, or body politic and corporate, proprietors or managers of the libraries following, viz. the British Museum, Sion College, "the

Eleven copies of each book shall be delivered to the warehouse-keeper of the company of stationers, for the use of the university libraries, &c.

Warehouse-keeper to deliver the books within one month after demand.

Penalty for not observing the directions of this act.

“ the Bodleian Library, Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, the Libraries of the Four Universities of Scotland, Trinity College Library, and the King's Library at Dublin, or so many of such eleven copies as shall be respectively demanded on behalf of such libraries respectively, shall be delivered by the publisher or publishers thereof, within one month after demand made thereof in writing as aforesaid to the warehouse-keeper of the said Company of Stationers for the time being; which copies the said warehouse-keeper shall and he is hereby required to receive at the Hall of the said Company, for the use of the library for which such demand shall be made within twelve months as aforesaid; and the said warehouse-keeper is hereby required, within one month after such book or volume shall be so delivered to him as aforesaid, to deliver the same for the use of such library; and if any publisher, or the warehouse-keeper of the said Company of Stationers, shall not observe the directions of this act therein, that then he and they, so making default in not delivering or receiving the said eleven printed copies as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for each copy not so delivered or received, together with full costs of suit; the same to be recovered by the person or persons, or body politic or corporate, proprietors or managers of the library, for the use whereof such copy or copies ought to have been delivered or received; for which penalty and value, such person or persons, bodies politic or corporate is or are hereby authorized to sue by action of debt, &c.”

By sect. 3. the above libraries are only entitled to the additional matter of a second edition, or any subsequent one.

As to the fourth particular, *viz.* In what manner such copy-right may be assigned.

Knaplock v. Curle, 4. Vin. Abr. 273.

*Sect. 39.* It hath been determined that the author is not divested of the copy-right by his delivering the manuscript of it to the printer to be printed, for this is only an authority to the printer to print that edition; and therefore the author may afterwards grant the copy-right to another person.

2 Bro. C. C. 80.

*Sect. 40.* It hath also been determined, that if an author make an assignment of “all his right and interest” in his work, he thereby transfers not only his absolute right for the first fourteen years, but also his contingent interest in the second term that may accrue to him on his being alive at the determination of the first.

As to the fifth particular, *viz.* What shall be considered a literary work, and what a pirating of copy-right.

Bach v. Longman, Cowp. 623.

† *Sect. 41.* It has been determined, that a person who writes a sonata, or other musical composition, is entitled to the exclusive copy-right of it under 8 Ann. c. 9.; for the recital of the statute says, “Whereas printers, booksellers, and other persons have,

" have, of late, frequently taken the liberty of printing, reprinting, and publishing books and other writings, without the consent of the authors or proprietors of such books and writings, &c." and therefore the statute is not confined to language and letters; and music is a science and may be written; that is, the composer's ideas may be conveyed by signs and marks, which is sufficient; for, by a more narrow interpretation of the statute, algebra, mathematics, arithmetic, hieroglyphics, would be excluded.

† *Sect. 42.* It hath also been determined, that the publication of an epistolary correspondence, either by the permission of the writer or receiver of the letters, is as much the subject of copy-right as any other literary work. Pope v. Curl,  
2 Atk. 342.

† *Sect. 43.* The principal part of Mr. Gray's poems had been published many years; Mr. Mason republished them, with the life of Mr. Gray, and introduced other poems of Mr. Gray's, till then unpublished; and it was held that this was an original work, and that the author was entitled to copy-right therein. Mason v. Mur-  
ray, 2 Br. C.  
C. 85.

† *Sect. 44.* But if an author publish a work, as, for instance, the translation of Don Quixote, and another person publish the same work, only adding plates, the mere act of embellishing will not make the second publication an original work. 2 Br. C. C. 85.

† *Sect. 45.* So also where a book of roads was printed in letter-press, and it was republished before the copy-right had expired, with the great roads engraved on copper-plates, and the cross-roads in letter-press, it was decreed that this alteration did not make the whole of the second publication original, and an injunction was granted; but if a man make a new survey by actual measurement of the same roads, of which a survey is before published, a publication of the second survey would be a new work, how similar soever it might be to the first publication. Carman v.  
Bowles, 2 Br.  
C. C. 80.

† *Sect. 46.* It seems to be agreed, that the author of a real and fair abridgment of a work is intitled to the copy-right of it; for abridgments may with great propriety be called new books, because not only the paper and print, but the invention, learning, and judgment of the author is shewn in them; and in many cases abridgments are extremely useful, as *Le Journal des Sçavans*, and several others that might be mentioned, although in some instances they may prejudice the original work, by mistaking and curtailing the sense of the author: but when books are colourably shortened only, as where a book called "*Modern Crown Law*" appeared in fact borrowed almost verbatim from *Hale's Pleas of the Crown*, only some old repealed statutes left out, and all the Latin and French quotations put into English, it was held that the author was not entitled to any copy-right therein. Barrow v.  
Nutt, 2 Atk.  
143.  
  
Giles v. Wil-  
cox, 2 Atk. 141.

† *Sect. 47.* So also where a second book no otherwise varies from Bar. Chan.  
Rcp. 369.

from the first than by leaving out certain parts, and only by that means shortening it, it has been held not to be a fair abridgment, and that the author had no copy-right therein.

Dodsley v. Kennedy, Ambler, 696.

† Sect. 48. But extracts from a work may be published in a magazine.

Colman v. Wathen, 5 T. Rep. 245.

† Sect. 49. It hath been determined, that after a dramatic work has been represented on the stage, and the copy-right of the drama sold by the author, the representation of the same piece on another stage is not a piracy within the 8 Ann. c. 19.; for reporting any thing from memory can never be a publication within that statute.

Macklin v. Richardson, Ambler, 694.

† Sect. 50. But it hath been determined, that if a dramatic author suffer his piece to be performed only by his particular permission, taking the copy from the prompter when the representation is over, but never prints or publishes it, it is piracy to take down the piece in short-hand while it is representing, and to publish it, although the inaccuracies of the short-hand writer are corrected by the memory of the publisher.

Pope v. Curl, 2 Atk. 342. 1 Bl. Rep. 332.

† Sect. 51. So also the writer of familiar letters retains a right to the contents of his letters, and the person to whom they are sent has only a special property in them; and the sending does not give a license to any person whatsoever to publish them to the world, for the property of them subsists in the writer.

As to the sixth particular, viz. What remedies are given to preserve copy-right.

By 54 Geo. 3. c. 156. s. 4. it is enacted, " That if any book-seller or printer or other person whatsoever, in any part of the " United Kingdom of Great Britain and Ireland, in the Isles of " Man, Jersey or Guernsey, or in any other part of the British " dominions, shall, from and after the passing of this act, within " the terms and times granted and limited by this act as aforesaid, " print, reprint or import, or shall cause to be printed, reprinted " or imported, any such book or books, without the consent of " the author or authors, or other proprietor or proprietors of " the copy-right of and in such book or books, first had and obtained in writing; or knowing the same to be so printed, reprinted or imported, without such consent of such author or " authors, or other proprietor or proprietors, shall sell, publish " or expose to sale, or cause to be sold, published or exposed to sale, or shall have in his or their possession for sale, any such " book or books, without such consent first had and obtained as " aforesaid, then such offender or offenders shall be liable to a " special action on the case, at the suit of the author or authors, " or other proprietor or proprietors of the copy-right of such " book or books so unlawfully printed, reprinted or imported, " or published or exposed to sale, or being in the possession of " such offender or offenders for sale as aforesaid, contrary to the " true intent and meaning of this act: and every such author or " authors, or other proprietor or proprietors, shall and may, by " and in such special action upon the case, to be so brought " against

“ against such offender or offenders, in any court of record in  
 “ that part of the said United Kingdom, or of the British domi-  
 “ nions, in which the offence shall be committed, recover such  
 “ damages as the jury on the trial of such action, or on the exe-  
 “ cution of a writ of inquiry thereon, shall give or assess, together  
 “ with double costs of suit; in which action no wager of law,  
 “ essoin, privilege or protection, nor more than one imparlance,  
 “ shall be allowed; and all and every such offender and offenders  
 “ shall also forfeit such book or books, and all and every sheet  
 “ being part of such book or books, and shall deliver the same  
 “ to the author or authors, or other proprietor or proprietors of  
 “ the copyright of such book or books, upon order of any court  
 “ of record in which any action or suit in law or equity shall be  
 “ commenced or prosecuted by such author or authors, or other pro-  
 “ prietor or proprietors, to be made on motion or petition to the  
 “ said court, and the said author or authors, or other proprietor or  
 “ proprietors, shall forthwith damask or make waste paper of the said  
 “ book or books and sheet or sheets; and all and every such  
 “ offender and offenders shall also forfeit the sum of three pence  
 “ for every sheet thereof, either printed or printing, or published  
 “ or exposed to sale, contrary to the true intent and meaning of  
 “ this act; the one moiety thereof to the king’s most excellent  
 “ majesty, his heirs and successors, and the other moiety thereof  
 “ to any person or persons who shall sue for the same, in any  
 “ such court of record, by action of debt, bill, plaint or informa-  
 “ tion, in which no wager of law, essoin, privilege, or protection,  
 “ nor more than one imparlance shall be allowed: provided al-  
 “ ways, that in Scotland such offender or offenders shall be liable  
 “ to an action of damages in the court of session in Scotland,  
 “ which shall and may be brought and prosecuted in the same  
 “ manner in which any other action of damages to the like  
 “ amount may be brought and prosecuted there; and in any such  
 “ action where damages shall be awarded, double costs of suit or  
 “ expenses of process shall be allowed.”

By sect. 5. of the act, the title to the book must be entered within one month after the first day of sale, publication or advertisement, within the bills of mortality, or within three months if published in any other part of the United Kingdom, in the register book of the Stationers’ Company, and a copy on the best paper delivered for the use of the British Museum, under a penalty in default of making such entry by the publisher of five pounds and eleven times the price of the book, with a proviso, that the default shall not affect the title to copy-right but only subject the person making default to the penalty.

† Sect. 52. It hath been determined on the statute of Ann. that if a book has been pirated, and printed in Ireland, yet that will not excuse the vendor from the penalties of this act. Pope v. Curl, 2 Atk. 312.

† Sect. 53. So also it hath been determined, that an action may be brought, or an injunction obtained in a court of equity, although the publication be not entered at Stationers’ Hall. Lord Mansfield, 1 Bl. Rep. 330.

† Sect.

† *Sect. 54.* By 12 Geo. 2. c. 36. s. 1. "It shall not be lawful for any person or persons whatsoever to import or bring into this kingdom for sale, any book or books first composed or written, and printed and published in this kingdom, and reprinted in any other place or country whatsoever; and if any person or persons shall import or bring into this kingdom for sale any printed book or books so first composed or written, and printed in this kingdom, and reprinted in other place or country, as aforesaid; or knowing the same to be so reprinted or imported, contrary to the true intent and meaning of this act, shall sell, publish, or expose to sale any such book or books; then every such person or persons so doing or offending, shall forfeit the said book or books, and all or every sheet or sheets thereof; and the same shall be forthwith damasked, and made waste paper; and further, that every such offender or offenders shall forfeit the sum of five pounds, and double the value of every book which he or they shall so import or bring into this kingdom, or shall knowingly sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the king's most excellent majesty, his heirs and successors, and the other moiety to any person or persons that shall sue for the same; to be recovered with costs of suit in any of his majesty's courts of record at Westminster by action of debt, bill, plaint, or information; in which no wager of law, essoin, or protection, or more than one imparlance shall be allowed; and if the offence be committed in *Scotland*, to be recovered before the court of session there, by summary action: provided that this act shall not extend to any book that has not been printed or reprinted in this kingdom within twenty years before the same shall be imported."

† *Sect. 55.* By 12 Geo. 2. c. 36. s. 2. it is further enacted, "That nothing in this act contained shall extend to prevent or hinder the importation of any book first composed or written, and printed in this kingdom, which shall or may be reprinted abroad, and inserted among other books or tracts, and to be sold therewith, in any collection where the greatest part of such collection shall have been first composed or written, and printed abroad; any thing in this act contained to the contrary notwithstanding."

† *Sect. 56.* It hath been determined under this statute, that two penalties may be incurred on the same day, if the acts of sale are distinct.

† *Sect. 57.* By 34 Geo. 3. c. 20. s. 57. "It shall not be lawful for any person or persons whatsoever to import or bring into this kingdom, for sale, any book or books first composed, written, or printed, and published in this kingdom, and reprinted in any other country or place whatsoever; and if any person or persons shall import or bring, or cause to be imported or brought into this kingdom, for sale, any printed book or books first composed, written, or printed and published in this kingdom, and reprinted in any other country or place as aforesaid,

or

Brooke v.  
Miliken,  
3 Term Rep  
509.

Penalty on  
importing for  
sale, books  
first printed in  
this kingdom,  
and reprinted  
in any other,  
&c.

"or shall knowingly sell, publish, expose to sale, or have in his, her, or their possession for sale, any such book or books, then every such book and books shall be forfeited, and shall and may be seized by any officer or officers of customs or excise, and the same shall be forthwith made waste paper; and further, that every person and persons so offending, being duly convicted thereof, shall for every such offence forfeit the sum of ten pounds, and double the value of each and every copy of such book or books which he, she, or they, shall so import or bring, or cause to be imported or brought into this kingdom, or shall knowingly sell, publish, expose to sale, or cause to be sold, published, or exposed to sale, or shall have in his, her, or their possession for sale, contrary to the true intent and meaning of this act; and the commissioners of customs in England and Scotland respectively (in case the same shall be seized by any officer or officers of the customs), and the commissioners of excise in England and Scotland respectively (in case the same shall be seized by any officer or officers of excise), shall also reward the officer or officers who shall seize any such books which shall be so made waste paper of, with such sum or sums of money as they the said respective commissioners shall think fit, not exceeding the value of such books; such rewards respectively to be paid by the said respective commissioners out of any money in their hands respectively arising from the duties by this act imposed: provided, that this act shall not extend to any book that has not been printed or reprinted in this kingdom within twenty years before the same shall be imported, nor to any book reprinted abroad, and inserted among other books or tracts to be sold therewith in any collection where the greatest part of such collection shall have been first composed or written abroad."

Commissioners of customs and excise may reward their officers seizing such books.

As to the FIFTH POINT, *viz.* How far engravers have an exclusive right to engravings.

† Sect. 58. By 8 Geo. 2. c. 13. s. 1. it is enacted, "That every person who shall invent and design, engrave, etch, or work in mezzotinto or *chiard oscuro*; or from his own works and inventions shall cause to be designed and engraved, etched, or worked in mezzotinto or *chiaro oscuro*, any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints; and that if any printseller or other person whatsoever, from and after the twenty-fourth day of June one thousand seven hundred and thirty-five, within the time limited by this act, shall engrave, etch, or work as aforesaid, or in any other manner copy and sell, or cause to be engraved, etched, copied and sold, in the whole or in part, by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause to be printed, reprinted, or imported for sale, any such print or prints, or any parts thereof, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him or them

Property of prints vested in the inventor for fourteen years, 3 Wils. 60.

Proprietor's name to be affixed to each print.

Penalty on print-sellers or others pirating the same.



“ them respectively in the presence of two or more credible witnesses, or knowing the same to be so printed or reprinted, without the consent of the proprietor or proprietors, shall publish, sell, or expose to sale, or otherwise, or in any other manner dispose of, or cause to be published, sold, or exposed to sale, or otherwise, or in any other manner disposed of, any such print or prints, without such consent first had and obtained as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of, or whereon such print or prints are or shall be so copied or printed) to the proprietor or proprietors of such original print or prints, who shall forthwith destroy and damask the same; and further, that every such offender or offenders shall forfeit five shillings for every print which shall be found in his, her, or their custody, either printed or published, and exposed to sale, or otherwise disposed of, contrary to the true intent and meaning of this act; the one moiety thereof to the king’s most excellent majesty, his heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of his majesty’s courts of record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.”

Not to extend to purchasers of plates from the original proprietors.

† *Sect. 59.* By 8 Geo. 2. c. 13. s. 2. it is enacted, “ That it shall and may be lawful for any person or persons, who shall hereafter purchase any plate or plates for printing, from the original proprietors thereof, to print and reprint from the said plates, without incurring any of the penalties in this act mentioned.”

Limitation of actions.

† *Sect. 60.* By 8 Geo. 2. c. 13. s. 3. it is further enacted, “ That if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done any thing in pursuance of this act, the same shall be brought within the space of three months after so doing; and the defendant or defendants, in such action or suit, shall or may plead the general issue, and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law.”

General issue.

† *Sect. 61.* By 8 Geo. 2. c. 13. s. 4. it is further enacted, “ That if any action or suit shall be commenced or brought against any person or persons for any offence committed against this act, the same shall be brought within the space of three months after the discovery of every such offence, and not afterwards; any thing in this act contained to the contrary notwithstanding.”

nal inven-  
of  
c.

† *Sect. 62.* By 7 Geo. 3. c. 38. s. 1. it is enacted, “ That all  
“ and

“and every person and persons who shall invent or design, engrave, etch, or work in *mezzotinto* or *chiaro oscuro*, or from his own work, design, or invention, shall cause or procure to be designed, engraved, etched, or worked in *mezzotinto* or *chiaro oscuro*, any historical print or prints, or any print or prints, of any portrait conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have, and are hereby, declared to have, the benefit and protection of the said act and this act, under the restrictions and limitations hereinafter mentioned.

† Sect. 63. By 7 Geo. 3. c. 38. s. 2. “All and every person and persons who shall engrave, etch, or work in *mezzotinto* or *chiaro oscuro*, or cause to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have, and are hereby declared to have, the benefit and protection of the said act, and this act, for the term hereinafter mentioned, in like manner as if such print had been graven or drawn from the original design of such graver, etcher, or draftsman; and if any person shall engrave, print, and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this and the said former act, every such person shall be liable to the penalties contained in the said act, to be recovered as therein and hereinafter is mentioned.”

intituled to the benefit of rectified and present act, &c.

† Sect. 64. By 7 Geo. 3. c. 38. s. 5. “All and every the penalties and penalty inflicted by the said act, and extended, and meant to be extended, to the several cases comprised in this act, shall and may be sued for and recovered in like manner, and under the like restrictions and limitations, as in and by the said act is declared and appointed; and the plaintiff or common informer, in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former act), shall recover the same, together with his full costs of suit.”

† Sect. 65. By 7 Geo. 3. c. 38. s. 6. “The party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed.”

† Sect. 66. By 7 Geo. 3. c. 38. s. 6. it is further enacted, “That the sole right and liberty of printing and reprinting, intended to be secured and protected by the said former act and this act, shall be extended, continued, and be vested in the respective proprietors, for the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively hereinbefore and in the said former act mentioned.”

The right intended vested in the proprietors for twenty-eight years.

† Sect. 67. By 7 Geo. 3. c. 38. s. 8. “If any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants, in any such action or suit, shall or may

Limitation of actions.

General issue. "plead the general issue, and give the special matter in evidence; and if, upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants, in any other case, hath or have by law."

Full costs.

If any engraver, &c. shall engrave &c. any print, without the consent of the proprietor, he shall be liable to damages, and double costs.

† Sect. 68. By 17 Geo. 3. c. 57. s. 1. it is further enacted "That if any engraver, etcher, printseller, or other person shall, within the time limited by the aforesaid acts, or either of them, engrave, etch, or work, or cause or procure to be engraved, etched, or worked, in *mezzotinto* or *chiaro oscuro*, or otherwise, or in any other manner copy in the whole, or in part, by varying, adding to, or diminishing from, the main design, or shall print, reprint, or import for sale, or cause or procure to be printed, reprinted, or imported for sale, or shall publish, sell, or otherwise dispose of, or cause or procure to be published, sold, or otherwise disposed of, any copy or copies of any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, which hath, or have been, or shall be, engraved, etched, drawn, or designed, in any part of Great Britain, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of, and attested by, two or more credible witnesses, then every such proprietor or proprietors shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with double costs of suit."

Blackwell v. Harper, in chancery, before Lord Hardwicke, Dec. 1740. 2 Atk. 93.

† Sect. 69. It has been determined upon this statute, that the words "invent," "his own invention," do not confine the copyright merely to works originating in the imagination of the artist, as allegorical or fabulous representations; but that they mean the designing or engraving of any thing that is already in nature, as medicinal plants, buildings, houses, gardens, &c. c

Lord Hardwicke. 2 Atk. 93.

† Sect. 70. It has also been said by very high authority, that the words *sculpsit et delineavit* added to the name of the person who prints the work, are sufficient to shew that person to be the proprietor.

† Sect. 71. It was also doubted, whether the property did not vest in the engraver, designer, &c. though the day of the publication be not annexed to the foot of the print, compliance with that direction of the act being thought only necessary to make the penalty accrue (a). But it has been determined, that the two conditions of the act, viz. the day of the first publishing the print, and the name of the proprietor thereof, must both of them be engraved and printed, in order that it may be known when the exclusive right of the proprietor ceases, and when and against whom

(a) Ibid.  
Sayer *qui tam* v.  
Dicey et al',  
3 Wilson 69.



whom the person pirating may be guilty of offending against the act.

† *Sect. 72.* And it seems, that if it appear the date is anterior to the time when the person whose name the print bears became the proprietor of it, it is not within the protection of the act. Bonner v. Field, Sitt. Hil. Term, 1781.

† *Sect. 73.* But it seems to be undecided, whether on the assignment of a print the name of the inventor, or the assignee, ought to appear. Thompson v. Symonds, 5 Term Rep. 41.

† *Sect. 74.* It hath also been determined, that the assignee of a print may maintain an action on 17 Geo. 3. c. 57. against any person who pirates it, and that in such action it is not necessary to produce the plate itself in evidence, but that the production of one of the prints taken from the original plate is sufficient; but the date must always appear on the print. Thompson v. Symonds and Another, 5 Term Rep. 41.

As to the *SIXTH POINT, viz.* How far calico-printers have an exclusive right to their patterns.

† *Sect. 75.* By 27 Geo. 3. c. 38. s. 1. it is enacted, “ That  
 “ any person who shall invent, design, and print, or cause to be  
 “ invented, designed, and printed, and become the proprietor of  
 “ any new and original pattern or patterns for printing linens,  
 “ cottons, calicos, or muslins, shall have the sole right and  
 “ liberty of printing and reprinting the same for the term of two  
 “ months, to commence from the day of the first publishing  
 “ thereof, which shall be truly printed with the name of the  
 “ printer or proprietors at each end of every such piece of linen,  
 “ cotton, calico, or muslin; and that if any calico-printer,  
 “ linen-draper, or other person whatsoever, from and after the  
 “ first day of June, one thousand seven hundred and eighty-seven,  
 “ within the time limited by this act, shall print, work, or copy,  
 “ such original pattern or patterns, or cause to be printed,  
 “ worked, or copied, such original pattern or patterns, or shall  
 “ print or reprint, or cause to be printed or reprinted, any such  
 “ pattern or patterns, and shall publish, sell, or expose to sale, or  
 “ in any other manner disposed of or cause to be published, sold,  
 “ or exposed to sale, or in any other manner dispose of, any linen,  
 “ cotton, calico, or muslin, so printed, without the consent of the  
 “ proprietor or proprietors thereof first had and obtained in writing,  
 “ signed by him or them respectively, in the presence of two or more  
 “ credible witnesses, knowing the same to be so printed or re-  
 “ printed without the consent of the proprietor or proprietors of  
 “ such pattern, then every such proprietor or proprietors shall and  
 “ may, if the offence be committed in England, by and in a special  
 “ action upon the case, to be brought against the person or per-  
 “ sons so offending, recover such damages as a jury on the trial  
 “ of such action, or on the execution of a writ of inquiry thereon,  
 “ shall give or assess, together with costs of suit, in which no  
 “ wager of law, essoin, privilege, or protection, or more than one  
 “ imparlance, shall be allowed; and if the offence be committed  
 “ in Scotland, every such proprietor or proprietors shall and may,  
 “ by an action to be brought before the court of session, or any  
 “ judge competent to try civil causes within his bounds, recover  
 “ such damages as the said court of session, or the said judge,  
 “ shall

The proprietor of any original pattern for printing linens to have the sole right of printing it for two months from first publication, and whoever shall within that period print the same, to be liable to an action for damages.

but any person purchasing plates from the proprietors may print therefrom.

Mode of prosecuting for offences against this act.

"shall give or assess, and for payment wh f decree shall be  
 "issued, with full costs of suit, on which execution shall  
 "pass as is competent by the laws and pr if Scotland in the  
 "like cases; provided nevertheless, that it and may be law-  
 "ful for any person or persons who shall hereafter purchase any  
 "plate or plates, block or blocks, for printing, from the original  
 "proprietors thereof, to print, reprint, and expose for sale, or  
 "cause to be printed, reprinted, and exposed for sale, from the  
 "said plates or blocks, without being liable to any action on that  
 "account."

† Sect. 76. By 27 Geo. 3. c. 38. s. 2. "If any action or suit  
 "shall be commenced or brought against any person or persons  
 "whatsoever, for any offence committed against this act, the same  
 "shall be brought within the space of six months after so doing,  
 "and the defendant and defendants, in such action or suit, if  
 "brought in England, shall and may plead the general issue, and  
 "give the special matter in evidence; and if, upon such action  
 "or suit, a verdict shall be given for the defendant or defendants,  
 "or if the plaintiff or plaintiffs become nonsuited, or discontinue  
 "his, her, or their action or actions, then the defendant or de-  
 "fendants shall have and receive full costs; for the recovery  
 "whereof he shall have the same remedy as any other defendant  
 "or defendants in any other case hath or have by law; and if  
 "such action be brought in Scotland, and not insisted in, or if  
 "the defender be assoilzied, then the defender shall be intitled  
 "to full costs, for the recovery whereof he shall have the same  
 "remedy as hereinbefore is given to the pursuer."

### 9. *Forestalling, Ingrossing, and Regrating.*

For the better understanding the nature of forestalling, ingross-  
 ing, and regrating, and other such like offences, I shall consider:

1. How such offences are treated by the common law.
2. How by statute.

As to the FIRST POINT, viz. How forestalling, ingrossing, and  
 regrating, are treated by the common law, I shall consider,

1. What is esteemed an offence of this kind by the common law.
2. How such offence is punishable by the common law.

As to the first of these particulars, viz. What is esteemed an  
 offence of this kind at common law.

(a) 43 Ass. 38.  
 3 Inst. 195, 196.  
 B. Indictment,  
 40.  
 Presentment,  
 12.  
 (b) Crom. 18.  
 (c) Crom. 80.

Sect. 1. It is said, that all endeavours whatsoever to enhance  
 the common price of any merchandize, and all kinds of practices  
 which have an apparent tendency thereto, whether by spreading  
 false (a) rumours, or by (b) buying things in a market before the  
 accustomed hour, or by buying and selling again the same thing  
 in the same (c) market, or by any other such like devices, are  
 highly criminal at common law, and that all such offences an-  
 ciently came under the general notion of forestalling, which in-  
 cluded all kinds of offences of this nature.

Sect.

**Sect. 2.** And surely there can be no attempt of this kind but must be looked upon as a high offence against the public, inasmuch as it so apparently tends to put a check upon trade, to the general inconvenience of the people, by putting it out of their power to supply themselves with a commodity, without an unreasonable expense, which often proves extremely oppressive to the poorer sort, and cannot but give just cause of complaint to the richest.

**Sect. 3.** But it hath been resolved, that any merchant, whether he be a subject or a foreigner, bringing victuals, or any other merchandize into the realm, may sell the same in gross, but that no person can lawfully buy within the realm any merchandize in gross, and sell the same in gross again, because by such means the price will be enhanced, for the more hands any merchandize passeth through, the dearer it must grow, because every one will make his profit of it; and if such practices were allowable, a rich man might ingross into his hands a whole commodity, and then sell it at what price he should think fit; which is of such dangerous consequence, that the bare ingrossing of a whole commodity, with an intent to sell it at an unreasonable price, is an offence indictable at the common law, whether any part thereof be sold by the ingrosser or not.

3 Inst. 196.  
Summary, 150.

C. Car. 231,  
232.

**Sect. 4.** And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf, perhaps for this reason, because by such means the market is in effect forestalled.

3 Inst. 197.  
Summary, 152.

As to the second particular, *viz.* In what manner offences of this kind are punishable by the common law.

**Sect. 5.** It is said, that by an ancient statute the offender was to be grievously amerced for the first offence; for the second, to be condemned to the pillory; for the third, to be imprisoned; and for the fourth, to be condemned to abjure the vill. And there seems to be no doubt, but that at this day all offenders of this kind are liable to a fine and imprisonment, answerable to the heinousness of their offence, upon an indictment at common law.

3 Inst. 195.

As to the SECOND POINT, *viz.* In what manner these offences are treated by statute.

I shall consider what particular provisions have been made relating to this matter.

The particular provisions of this statute are five-fold.

1. The obliging all victuallers to sell at a reasonable price.
2. The allowing all foreigners free liberty of importing and selling victuals.
3. The giving the great officers of state a power to tax the price of victuals.
4. The prohibiting conspiracies to raise the price of victuals.
5. The prohibiting all forestalling, ingrossing, and regrating.

As

As to the first particular, *viz.* The obliging all victuallers to sell at a reasonable price.

How butchers selling un-wholesome meat are to be punished, vide 1 vol. Running-ton's Statutes, p. 187. c. 7. By 4 Hen. 7. c. 3. they shall not kill beasts in walled towns. By 21 Hen. 8. c. 8. they shall not kill calves but within the time prescribed. By 22 Hen. 8. c. 6. they are prohibited from keeping tan-houses. By 1 Jac. 1. c. 22. they are not to kill calves under five weeks old. By 5 Ann. c. 32. s. 2. they are not to sell cattle to one another in London. By 7 Ann. c. 6. may sell dead calves or sheep.

*Sect. 6.* This depends upon 23 Edw. 3. c. 6. by which it is enacted, "That butchers, fishmongers, regrators, hostlers, brewers, bakers, poulterers, and other sellers of all manner of victuals, shall be bound to sell the same for a reasonable price, having respect to the price that such victuals shall be sold at in the places adjoining; so that such sellers have moderate gains, reasonably to be required, according to the distance of the place from whence the said victuals be carried; on pain to forfeit double the value, &c. And the chief officers of towns are required to see this statute executed, on pain of paying the treble value of the thing sold, &c."

As to the second particular, *viz.* The allowing all foreigners free liberty of importing and selling victuals.

*Sect. 7.* By 6 Rich. 2. c. 10. and 11 Rich. 2. c. 7. and 1 Hen. 4. c. 17. it is enacted, "That all manner of aliens, being of the amity of the king, coming into any town of the realm with fish, or other victual, shall be under the king's especial protection, and may cut their fishes and victuals in pieces, and in part, or in all, at retail, or in gross, as to them best shall seem, to sell and make their profit, &c."

*Sect. 8.* By 14 Hen. 6. c. 6. "If any man disturb any alien to sell his fish in gross, or at retail, in part or in whole, contrary to the above-mentioned ordinances, and thereof be duly attainted at the suit of the king, or of the party, he shall forfeit ten pounds, &c."

As to the third particular, *viz.* The giving the great officers of state a power to tax the price of victuals.

*Sect. 9.* This depends upon 25 Hen. 8. c. 2. by which it is enacted, "That to remedy the frequent rise of the price of cheese, butter, capons, hens, chickens, and other necessary victuals for man's sustenance, by ingrossing and regrating the same; the lord chancellor and other high officers of state, &c. may, upon complaint of any enhancing of the prices of such victuals without ground or reasonable cause, in any part of the king's dominions, set and tax reasonable prices of such victuals: and that after proclamation made of such prices, all farmers, owners, broggers, and all other victuallers whatsoever, having or keeping any such victuals to the intent to sell, shall sell the same to such of the king's subjects as will buy them at such prices as shall be taxed by such proclamation, under the pains to be limited in the said proclamation."

*Sect. 10.* But by 25 Hen. 8. c. 2. "The officers of cities, boroughs, or towns-corporate, and all other persons having authority to set prices of such victuals, may set such prices in such manner as if the said act had not been made."

Vide also 24 Hen. 8. c. 3. 25 Hen. 8. c. 1. 27 Hen. 8. c. 9. which enjoin that butcher's meat shall be sold by the pound, &c. But by 33 Hen. 8. c. 11. it may be sold by weight or otherwise.

As to the fourth particular, *viz.* The prohibiting conspiracies to raise the price of victuals.

*Sect. 11.* This depends upon 2 and 3 Edw. 6. c. 15. by which it is enacted, "That if any butchers, brewers, bakers, poulterers, cooks, coster-mongers, or fruiterers, shall conspire, covenant, promise, or make any oaths, that they shall not sell their victuals but at certain prices; or if any artificers, workmen, or labourers, do conspire, covenant, or promise together, or make any oaths, that they shall not make or do their works but at a certain price or rate; or shall not enterprise, or take upon them to finish what another hath begun, or shall do but a certain work in a day, or shall not work but at certain hours and times; every such person so conspiring, &c. shall forfeit for the first offence ten pounds; and if he pay not the same within six days, shall suffer twenty days imprisonment; and for the second offence shall forfeit twenty pounds, &c. and for the third, forty pounds, &c. And if any such conspiracy, covenant, or promise, be made by any society, brotherhood, or company, of any craft, mystery, or occupation of the victuallers above-mentioned, with the presence or consent of the more part of them, that then immediately upon such act of conspiracy, &c. over and besides the particular punishment before appointed, their corporation shall be dissolved; and that the said offences shall be determined at the assizes, sessions of the peace, or court leet." Vide 5 Eliz. c. 4. 12 Mod. 248.

† *Sect. 12.* But by 2 Geo. 3. c. 14. "No brewer, innkeeper, victualler, or other retailer of strong beer or ale, shall be sued, impleaded, or molested by indictment, information, popular action or otherwise, for advancing the price of strong beer or ale in a reasonable degree."

† *Sect. 13.* And by 2 Geo. 3. c. 14. it is also enacted, "That if any brewer, innkeeper, victualler, or retailer of beer or ale, shall mix, or cause, or suffer to be mixed in any vessel, tub, measure, or otherwise, any strong beer, ale, or strong worts, with any small beer or small worts, or with water, after the gauge of such strong beer, ale, or strong worts shall have been taken by an officer of excise, he shall forfeit fifty pounds."

As to the fifth particular, *viz.* The prohibiting all forestalling, ingrossing, and regrating.

† *Sect. 14.* This depended chiefly upon 3 and 4 Edw. 6. c. 21., 5 and 6 Edw. 6. c. 14. altered by 5 Eliz. c. 5. s. 13., 5 Eliz. c. 12., and 13 Eliz. c. 25. s. 31. But it is recited by 12 Geo. 3. c. 71. "That it has been found by experience that the restraints laid by several statutes upon the dealing in corn, meal, flour, cattle, and sundry other sorts of victuals, by preventing a free trade in the said commodities, have a tendency to discourage the growth, and to enhance the price of the same; which statutes, if put in execution, would bring a great distress upon the inhabitants of many parts of this kingdom, and in particular upon those of the cities of London and Westminster;" and thereupon it is enacted, "That the 3 and 4 Edw. 6. c. 21., the 5 and 6 Edw.



"Edw. 6. c. 14., the 2 and 3 Philip and Mary, c. 3., the 5 Eliz. c. 5. and c. 12., the 15 Car. 2. c. 8., and so much of 5 Ann. c. 34. as relates to butchers selling cattle, alive or dead, within London and Westminster, and within ten miles thereof, and also all acts for the better enforcement of the same, being detrimental to the supply of the labouring and manufacturing poor of this kingdom, shall be, and the same are hereby declared to be, repealed."

2 Burn's Justice, 231.

† *Sect. 15.* But as the statute of Edward the Sixth particularly describes the several offences of forestalling, ingrossing, and regrating, which still continue offences at common law, it may be of use to recite it, notwithstanding it is repealed, as it contains a parliamentary description of those offences.

An indictment on this clause must charge expressly that the goods bought were "coming to the market to be sold," 1 Rolle's Rep. 421.

† *Sect. 16.* By 5 and 6 Edw. 6. c. 14. s. 1. "Whoever shall buy, or cause to be bought, any merchandize, victual, or any other thing whatsoever coming by land or by water toward any market or fair to be sold in the same, or coming toward any city, port, haven, creek, or road, of this realm or Wales, from any parts beyond the sea, to be sold, or make any bargain, contract, or promise, for the having or buying of the same, or any part thereof, so coming as is aforesaid, before the same shall be in the market, fair, city, or port, &c. ready to be sold, or shall make any motion by word, letter, message, or otherwise, to any person or persons for the enhancing of the price or dearer selling of any thing above-mentioned, or else dissuade, move, or stir any one coming to the market or fair to abstain or forbear to bring or convey any of the things above rehearsed to any market, city, or port, &c. to be sold, shall be deemed—A FORESTALLER."

Vide Owen, 135.

† *Sect. 17.* By 5 and 6 Edw. 6. c. 14. s. 2. "Whosoever shall by any means regrate, obtain, or get into his hands or possession in any fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, pigeons, conies, or other dead victual whatsoever, that shall be brought to any fair or market to be sold, and do sell the same again in any fair or market holden in the same place, or within four miles thereof, shall be taken for—A REGRATOR."

*Sect. 18.* By 5 and 6 Edw. 6. c. 14. s. 3. "Whosoever shall ingross or get into his hands by buying, contracting, or promise-taking, other than by demise, grant, or lease of land, or tithes, any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victual whatsoever, within the realm of England, to the intent to sell the same again, shall be reputed—AN UNLAWFUL INGROSSER."

In the construction of the last-mentioned clauses, the following opinions have been holden.

(a) 3 Inst. 195.  
Sum. 152.  
Cro. Car. 251.

*Sect. 19. I.* That (a) salt is a victual within the meaning of it, not only because it is of necessity of itself for the food and health of man, but also because it seasoneth and maketh wholesome beef, pork, and other victuals, in which respect it seemeth itself  
to

to come under the notion of victual, and seemeth to be so understood by the makers of 13 Eliz. 12. c. 25. as appears from par. 21. of that statute.

*Sect. 20. II.* That (a) such victual only as is necessary for the food of man is within the purview of it; and therefore that apples and cherries, and such like fruits, are not within the intent of it; for the words are, corn or grain, butter, cheese, fish, or other dead victuals, which words are said to import the same as if it had been said, or other dead victuals of like quality: also it is said, that there is not any thing prohibited within the statute, but what hath a proviso, how in some kind it might be brought; and therefore since there is not any such proviso for apples, that they never were intended to be restrained; and agreeably hereto it hath been holden, that neither (b) hops (1) nor (c) malt are within the meaning of the statute.

(a) 3 Inst. 195.  
Sum. 152.  
Cro. Car. 231.  
Owen, 135.  
Cro. Jac. 214.  
(b) Cro. Car. 231.  
(c) 3 Inst. 196.  
Con. Ow. 235.  
1 Roll. 12.

*Sect. 21. III.* That the buying of corn, with an intent to make (d) starch of it, and then to sell it, is not within the said clause, because it is not bought to be sold again in the same nature in which it was bought, but to be first altered by a trade or science, and then sold again. And for the like reason it seemeth to be the better (e) opinion, that the buying of corn in order to make meal of it, and then to sell it, is no way within the said clause; and that the buying of (f) barley with an intent to make it into malt, and then to sell it, had no need of the exception made for it in the said statute.

(d) Bridg. 5, 6.  
Owen, 135.  
(e) Moore, 595.  
Cro. Car. 231.  
Con. Ow. 135.  
(f) C. Car. 231.  
3 Inst. 196.  
Con. Ow. 135.

*Sect. 22. IV.* That there is no necessity in an information or indictment grounded on the said clause for ingrossing any victual therein mentioned, to say (g) that the defendant did not come by it by a demise of land, &c. but that the defendant, if he have any such matter to allege in his defence, may give it in evidence.

(g) 1 Jon. 157.

*Sect. 23. V.* That in every such information, &c. the words of the statute must be precisely pursued, and therefore that it is not sufficient to say, that the defendant bought so much corn, &c. because the words are, "shall ingross, or get into his hands, by buying, &c."

2 Leon. 35.

*Sect. 24.* And it is further enacted by the said statute of 5 and 6 Edw. 6. c. 14. par. 4, 5, 6. "That whoever shall offend in any of the things before recited, and be thereof duly convicted, shall, for the first offence, suffer imprisonment for two months, and forfeit the value of the goods so by him bought or had; and, for the second offence, shall suffer imprisonment for one half year, and forfeit the double value of the goods, &c.; and, for the third offence, shall be set on the pillory, and forfeit all his goods, and be committed to prison during the king's pleasure."

*Sect. 25.* And from hence it seems clearly to follow, as well as from the general rules of law, that no information for any of the

2 Buls. 317.  
Cro. Car. 381.

(1) See the case of *The King v. Waddington*, (1 East R. 143.) when the court decided hops to be a victual, particularly since the statute of 9

Ann. c. 12. s. 24. by which brewers are prohibited using any other bitter for their beer.

6 Modern, 32.  
Vide also, Cro.  
Car. 314.  
1 Roll. 11, 12.  
1 Jones, 320.

the above-mentioned offences against the said statute can be good, without shewing in certain the quantity of the thing in relation to which the defendant is supposed to have incurred the penalty, not only because otherwise the judgment to be given on such an information can never be pleaded in bar of any other, because it cannot appear that both of them were brought for the same thing, but also because it cannot appear to the court what forfeiture the defendant ought to incur, unless the extent of the offence, which is to be the measure of it, be specially set forth. And for these reasons it hath been adjudged, that an information for ingrossing corn, the quantity whereof is expressed by the word *cumulus* only, is not good; yet it is said, that an indictment for ingrossing *mag-nam quantitatam frumenti* is sufficient.

### *Of Regulating the Price of Victuals, &c.*

The statutes against the offences of forestalling, ingrossing, and regrating, contained particular exceptions to the general restraints which they imposed. These exceptions related to corn, butter, cheese, cattle, beer, cyder, munn, fish, wine, oil, sugar, salt, fishmongers, victuallers, butchers, poulterers, badgers, drovers, lessors, shipping, and castles and towns-corporate. Of the foregoing catalogue those exceptions which relate to fish, fishmongers, victuallers, butchers, poulterers, lessors, shipping and castles, and towns-corporate, are repealed. But as the intention of the legislature, both in enacting and in repealing these statutes, in accommodation to the emergencies of different periods of time, was to regulate the price of victuals, and to prevent them from being exorbitantly raised upon, or improperly introduced to the public, by the respective dealers therein; I shall endeavour to collect the several statutes which relate to the regulation under the following arrangement:

1. As to the measure of corn.
2. As to bread.
3. As to beer.
4. As to butter and cheese.
5. As to cattle and butchers.
6. As to fish.
7. As to bacon and pork.
8. As to hay and straw.
9. As to fruit.
10. As to honey and wax.
11. As to the measure of coals. (1)

And FIRST, As to the measure of corn.

† Sect. 1. By 22 Car. 2. c. 8. s. 2. "Whoever shall sell any  
"sort of corn or grain, ground or unground, or any kind of salt,  
"usually

(1) For the regulation of Wood cut up for fuel, vide 43 Eliz. c. 14. 9 Ann. c. 15. and 10 Ann. c. 6.

“usually sold by the bushel, by any other than by Winchester measure, marked in his majesty’s exchequer, and sealed as the act directs, containing eight gallons to the bushel, and no more or less, and the said bushel stricken even by the wood or brim of the same by the seller, shall forfeit forty shillings for every offence, on conviction, before one justice, by one witness; to be levied by the churchwardens, &c. by distress and sale; and in default, imprisonment till paid.”

† *Sect. 2.* By 22 Car. 2. c. 8. s. 3. “If any mayor or other head officer shall knowingly permit the same, on conviction at the sessions, he shall forfeit five pounds, half to the prosecutor and half to the poor, by distress, or imprisonment till paid.”

† *Sect. 3.* By 22 and 23 Car. 2. c. 12. “Whoever shall sell or buy any corn ground or unground, or salt, by the bag without measuring, being thereunto required, or in any other manner than as above directed, and that without shaking of the said bushel or measure by the buyer, shall forfeit, beside the above penalty, all the corn, grain, or salt, bought or sold contrary to this act, or the value thereof, to the party complaining.”

† *Sect. 4.* By 22 and 23 Car. 2. c. 12. “The proof shall lie upon the defendant to make it appear by the oath of one witness that he sold or bought the same lawfully; or, if he fail, he shall forfeit as before-mentioned, and which shall be distributed by the justice, half to the poor and half to the informer.”

† *Sect. 5.* It has been decided, that the object of the legislature in passing the above statutes was to establish throughout the kingdom one measure only, and therefore that they virtually abolish the use of those customary measures which were used in particular places; (2) and that it is illegal to sell corn by any other measure than the Winchester measure. (3)

Rex v. Major,  
4 Term Rep.  
750.

SECONDLY, As to bread.

The making and selling of it is regulated by 3 Geo. 4. c. 106. for London and within ten miles of the Royal Exchange; but as all the penalties are receivable before magistrates, they do not fall properly within a work treating of Pleas of the Crown. The reader is therefore referred to Burn’s Justice, where all the provisions upon this subject will be found accurately detailed.

THIRDLY,

(2) It has often been attempted by the legislature to introduce an uniformity of weights and measures throughout the whole kingdom; but the attempt has as often been defeated by the obstinacy and perverseness of interested individuals. It seems also to have been attempted in the very early times of our history, for we find in Fleta the components of all the weights and measures of the kingdom. He says that the bushel was formed thus: “*Item scire debet naturam et originem ponderum et mensurarum, ut veraciter et perfecte sciat, quantum bladi teneat ligena. et quantum BUSSELLUM; sed quoniam non scire hoc poterint, nisi per artem ponderum, ideo de ponderibus est, videntur. Et sciendum, quod per discretionem discretorum, totius regni Anglie fuit mensura domini regis composita, videlicet per denar. Anglie, qui STERLING appellatur, et fit rotundus qui debet ponderare triginta duo granu*

*frumenti mediocri, et unde viginti denarii, fac unciam, et duodecim uncie faciunt librarn, et pondus octo librarum frumenti fac mensuram jalonis, et octo jalonata frumenti, fac bussel de quibus octo consistit commune quarterium.”* (lib. 2. c. 12. De Pondera et Mensura.)

(3) For the mode by which the averaged price of corn is to be ascertained, vide 10 Geo. 3. c. 39. and for the same in London and Essex, 21 Geo. 3. c. 50. For regulations respecting its importation, 22 Car. 2. c. 13. 15 Car. 2. c. 7. 5 Geo. 2. c. 12. 6 Geo. 3. c. 17. 13 Geo. 3. c. 43. 16 Geo. 3. c. 39. 18 Geo. 3. c. 25. 19 Geo. 3. c. 29. For regulating its exportation, vide 1 W. & M. c. 12. 1 Geo. c. 7. 11 Geo. 2. c. 22. 13 Geo. 3. c. 43. s. 5. 14 Geo. 3. c. 64. 14 Geo. 3. c. 5. and 11. & 26. 16 Geo. 3. c. 37. 18 Geo. 3. c. 16. 31 Geo. 3. c. 30.

## THIRDLY, As to ale and beer.

No composition  
to be used.

† *Sect. 77.* By 1 Will. 3. sess. 1. c. 24. s. 17. "No common brewer or retailer of ale or beer shall use therein any molasses, coarse sugar, or any composition or extract thereof, on pain of forfeiting the said liquor, and also one hundred pounds, half to the king and half to the prosecutor, if sued for in six months."

Penalty.

† *Sect. 78.* By 10 & 11 Will. 3. c. 21. s. 34. "If any common brewer or retailer shall commit the said offence, or shall receive into his custody any quantity of the said materials exceeding ten pounds, he shall forfeit one hundred pounds, to be recovered and mitigated by the laws of excise; and the servant or assistant therein, twenty pounds, in like manner; and in default of payment shall be imprisoned three months."

*Sect. 79.* By 9 Ann. c. 12. par. 24. 26. "No common brewer, innkeeper, or victualler, shall use any broom, wormwood, or other bitter ingredient (to serve instead of hops) in any beer or ale for sale (except infusing the same after it is brewed and tunned, to make broom or wormwood ale or beer), on pain of twenty pounds, half to the prosecutor, &c. to be levied by the laws of excise."

N. B. As to enhancing the price of ale, &c. vide 2 & 3 Edw. 6. c. 15. and 2 Geo. 3. c. 14. before recited.

*Sect. 80.* By 12 Ann. stat. 1. c. 2. "No common brewer or retailer of beer or ale shall use any sugar, honey, foreign grains, Guinea pepper, essentia bina, coccus indicus, or any unwholesome ingredients, in the brewing of ale or beer, or mix any of them therewith, on pain of £20, to be distributed, recovered, and mitigated as aforesaid."

## FOURTHLY, As to the article of butter and cheese.

*Sect. 85.* It is recited by 13 & 14 Car. 2. c. 26. "That as butter is one of the principal commodities of the product of this kingdom, and is not only of universal use at home, but that great quantities are exported," it is thereupon enacted, "That every kilderkin of butter shall contain one hundred and twelve pounds, every firkin fifty-six pounds, and every pot fourteen pounds, reckoning sixteen ounces to the pound, and exclusive of the tare of the kilderkin, firkin, or pot; that new and old butter shall not be mixed; nor any whey-butter packed or mixed with butter made of cream, but that every package shall contain the same quality throughout; that no butter shall be salted with any great salt, nor more small salt mixed with it than is necessary for its preservation, on pain of forfeiting the same, and six times the value of every different pound of butter."

Noble v. Darel,  
4 Term Rep.  
271.

† *Sect. 86.* And it hath been decided, that as the legislature has ordained by the above statute, that every pound of butter shall contain sixteen ounces, a custom that every pound of butter sold in a particular market-town shall weigh eighteen ounces, is bad.

† *Sect. 87.* By 13 & 14 Car. 2. c. 20. s. 3. "No persons whatsoever shall repack for sale any butter, upon pain of double the value. And whoever shall pack butter, shall pack his butter into good and sufficient casks, &c. and shall set upon every firkin and cask, when the same is thoroughly seasoned in  
" water,

“water, a continuing visible mark of the just weight of the empty cask, and, when filled with butter, the first letter of his christian and surname at length, with an iron brand, on pain of ten shillings for every hundred weight of butter, and so in proportion for a greater or less quantity. And every potter shall set upon every pot which he shall make for the packing of butter the just weight of such pot when burnt, and his christian and surname as aforesaid, on pain of one shilling for every pot he shall omit so to mark; and every farmer or packer of butter, two shillings for every pot he uses so omitted to be marked, one half to the poor, the other to the prosecutor, to be recovered by action of debt, indictment, information, or presentment (if commenced within four months after the sale), either in the sessions of the peace, or in the court of record of the place where the offence is committed.”

† *Sect. 88.* By 4 Will. & Mary, c. 7. “After the factor or buyer hath bought and contracted for the said commodity, and approved by searching and weighing the same, if he think fit, the seller shall not be liable to any of the penalties above specified; but the said factor or buyer shall mark the said butter, or the cask wherein it is, and in case the same shall be afterwards exchanged or opened, the cask changed, or any bad butter mixed with good butter, or any other fraud be committed by the seller, the offender, on conviction by one witness before one justice, shall forfeit twenty shillings for every such firkin and offence.”

† *Sect. 89.* And by 4 Will. & Mary, c. 7. to the end the trade for butter and cheese may not be engrossed by particular persons, it is enacted, “That every warehouse-keeper, weigher, searcher, or shipper of butter and cheese, at any port or place in this kingdom, shall receive all butter and cheese brought to them for any of the cheesemongers free of the city of London, or other person making the said commodities, and shall take care and ship the same, without preference, on the next vessel for London, unless the owners order the contrary, at the rate of two shillings and six-pence a load, and no more, on pain of ten shillings for every firkin of butter, and five shillings for every wey of cheese. And the said weigher shall keep a book of receiving and shipping the same, &c.” (4)

FIFTHLY, As to cattle, &c.

† *Sect. 90.* It is enacted by 31 Geo. 2. c. 40. s. 11. “That no salesman or other broker or factor, who shall be employed to buy or sell any sort of cattle for others by commission, or for reward to be paid or taken by himself or any servant or agent, shall, directly or indirectly, for his own account, buy any live ox, bull, cow, steer, bullock, heifer, calf, sheep, lamb, or swine, in London

(4) By 3 Hen. 6. c. 4. 18 Hen. 6. c. 3. butter and cheese may be exported to any place.—By 9 Hen. 6. c. 8. the wey of cheese shall be of a certain weight.—By 2 Ph. & Mary, c. 5. 13 Eliz. c. 25. s. 20. a license is to be granted on the exportation.—By 21 Jac. 1. c. 22. justices may restrain the purchasing of them.—By 32 Car. 2. c. 2.

s. 9. the importation of foreign butter and cheese is restrained.—By 8 Geo. 1. c. 27. the packing of butter in the city of York is regulated.—By 17 Geo. 2. c. 8. the same at New Malton.—By 13 Geo. 3. c. 5. s. 2. cheese may be imported for a limited time, duty free.

“ London, or within the bills of mortality, or at any place while any such cattle shall be on the road, or be driving, bringing, or coming up, or offered to or for sale in London, or within the bills of mortality (other than such cattle which any such salesman, broker, or factor, shall actually purchase for the necessary use or provision of his family, and shall actually use accordingly); and that no such salesman, broker, or factor, shall sell or expose, or offer to or for sale, on his own account, in London, or within the bills of mortality, either by himself, or his servant or agent, any live ox, bull, cow, steer, bullock, heifer, calf, sheep, lamb, or swine, upon pain, on every conviction, of forfeiting double the value of any live cattle which he shall so buy or sell on his own account; provided the prosecution be commenced within three days after the offence committed.”

† *Sect. 91.* “ On complaint made on oath, the justice of the district is to summon, &c. the offender and the witnesses, and, on the parties appearing or not appearing, thereupon is to proceed to hear the complaint in a summary way, and on non-payment of the forfeiture on conviction is to issue his warrant for the levying thereof by distress and sale, and for want of distress to commit the offender for any time not exceeding one month, nor less than ten days, unless payment be sooner made. And a witness refusing to be examined may be committed not exceeding ten days. Appeal may be made by the seller, if aggrieved, to the quarter-sessions, on giving security and notice; and the determination of the sessions to be final.”

SIXTHLY, As to Fish, I shall examine,

1. The size and preservation of them.
2. The rules for fishing in and near the sea.
3. Their importation.

Vide 2 Inst.  
200.

† *Sect. 92.* It is said, that fishponds, or waters wherein fish are kept and nourished, being a matter of profit, and tending to the increase of victuals, any man may of common right erect them; and it is therefore provided by 3 Edw. 1. c. 20. “ That if any be attainted at the suit of the party of trespassing in parks or ponds, great and large amends shall be awarded, the offender suffer three months’ imprisonment, make fine at the discretion of the court, and find surety not to offend again, &c.”

As to the FIRST PARTICULAR, *viz.* Of the size and preservation of fish.

† *Sect. 93.* It is enacted by 1 Geo. 1. stat. 2. c. 18. s. 14. “ That no person shall cause any thing to be done in the Severn, Dee, Wye, Teame, Tees, Ribble, Mersey, Dun, Air, Ouse, Swale, Calder, Wharf, Eure, Darwent, or Trent, whereby the spawn of any salmon, or any salmon not eighteen inches from the eye to the extent of the middle of the tail, shall be taken or killed; or shall set any thing across the said rivers whereby the salmon may be hindered from passing up to spawn; or shall, from 31st July to 12th November, (except in the Ribble, where they may be taken between the 1st January and 15th September), take

"take any salmon of any kind; or shall after every 12th November fish there for salmon with any net less than two inches and a half in the mesh, on pain of forfeiting the fish, <sup>(a)</sup> nexts, and five pounds, on conviction within one month, on view, confession, or one witness, by distress, and to be distributed half to the informer and half to the poor: on default, hard labour for any term between one and three months, and such other corporal punishment as the justice shall think fit."

(a) As it is not said who shall have the fish, they are forfeited to the King. 2 Burn. 221.

† Sect. 94. By 1 Geo. 1. c. 18. s. 15. "No salmon out of the said rivers shall be sent to London under six pounds weight, on pain that the sender, buyer, and seller, shall forfeit five pounds and the fish, to be levied and distributed on conviction as aforesaid, or to suffer imprisonment as aforesaid for three months, unless sooner paid. But by s. 17. an appeal may be to the next sessions."

† Sect. 95. By 13 Edw. 1. stat. 1. c. 47. "No salmon shall be taken in any water where salmon are taken between 8th September and the 11th of November; nor shall any young salmon be taken at mill-pools (by 13 Rich. 2. s. 1. c. 19), in any other places from Mid-April to Midsummer, on pain of having the nets and engines burnt, for the first offence: for the second, imprisonment for a quarter of a year; for the third, a whole year; and so on, as the trespass shall increase; and overseers shall be assigned (b) to inquire of the same."

(b) 2 In

† Sect. 96. By 13 Rich. 2. stat. 1. c. 19. "No persons shall put into any waters at any time of the year any nets called stalkers, nor any other engines whatever by which the fry or breed of salmon, lampreys, or any other fish, may be destroyed, on pain as aforesaid. And all waters in Lancashire shall be put into defence as to taking of salmon from Michaelmas to Candlemas, and in no other time of the year."

† Sect. 97. By 17 Rich. 2. c. 19. "The justices of peace and the lord-mayer of London, on the Thames and Medway, shall survey the offences in both the acts last above-mentioned, and shall survey and search all the weirs in such rivers, that they shall not be very straight for the destruction of such fry and brood, but a reasonable wideness after the old assize used and accustomed: and they shall appoint under-conservators, who shall be sworn to make like survey, search, and punishment; and they shall inquire in sessions, as well by their office as at the information of the under-conservators, of all defaults aforesaid, and shall cause them which shall be thereof indicted to come before them, and if they be thereof convict, they shall have imprisonment and fine at the discretion of the justices; and if the same be at the information of an under-conservator, he shall have half the fine."

† Sect. 98. By 1 Eliz. c. 17. made perpetual by 3 Car 1. c. 4. "No person, of whatsoever state, degree, or condition, by any ways or means whatsoever, shall take and kill any young brood, spawn, or fry, of eels, salmon, pike, or of any other fish; nor shall take or kill any salmon or trout not being in season, nor any pike or pikerel not being in length ten inches or more, nor  
"any

Whether the penalty is £20. or 20s. for this offence, vide 2 Burn's Justice, tit. "Fish."



“any salmon not being in length sixteen inches or more, nor any trout not being in length eight inches or more, nor any barbel, not being in length twelve inches or more; nor shall any fish be taken with any manner of net, or by any other engine or device whatsoever, but only with a net or trammel whereof every mesh or mark shall be two inches and half broad, angling excepted.”

† *Sect. 99.* “But it is provided, that such nets and other engines as have been used for the taking of smelts, loches, minnows, bullheads, gudgeons, or eels, may still be in all such places where such fish have been used to be taken and killed, so that such persons do not take, kill, or destroy with such nets any other fish, contrary to the meaning of this act.”

† *Sect. 100.* “The lord-admiral of England, the mayor of London, the lord of every leet in England or Wales, or, in default of being presented to the leet, the justices of assize, &c. and all persons lawfully intitled to have any conservation of rivers, streams, or waters, are empowered to inquire into offences against this act by the oaths of twelve men or more, and to hear and determine the same within their respective jurisdictions; and all fines, &c. resulting from the several convictions, shall be to the use of such persons as heretofore lawfully had or were intitled to the same.”

† *Sect. 101.* By 33 Geo. 2. c. 27. “No person shall take, or knowingly have in his possession either in the water or on shore, or sell, or expose to sale, any spawn, fry, or brood of fish, or any unsizeable fish, or fish out of season, or any smelt not five inches long: and any person may seize the same, together with the baskets and package, and charge a constable or other peace-officer with the offender and with the goods, and shall carry them before a justice, and on conviction before such justice, the same shall be forfeited and delivered to such prosecutor, and the offender shall besides forfeit twenty shillings, half to the prosecutor and half to the poor where the offence is committed, on default, by distress, to be committed to hard labour not exceeding three months, unless sooner paid. But the justice may remit any portion equal to or within one half of the said penalty.”

† *Sect. 102.* By 2 Hen. 6. c. 15. “If any person shall fasten any nets over rivers, to stand continually day and night, he shall forfeit five pounds.”

As to the SECOND PARTICULAR, viz. The rules for fishing in and near the sea.

† *Sect. 103.* By 3 Jac. 1. c. 12. “Any person who shall erect any new weir along the sea-shore, or in any haven, harbour, or creek; or within five miles of the mouth thereof, or shall take spoil or destroy any spawn, fry, or brood, of any sea-fish, in any device whatsoever, shall forfeit ten pounds for every offence, half to the king, half to the informer; and if any person shall, within the distance of the places aforesaid, fish with any draw-net or drag-net under three inches mesh, viz. one inch and a half

"half from knot to knot, except for the taking of smoulds in Norfolk only, or with any net with canvass or other engine or device, whereby the spawn, fry, or brood of sea-fish may be destroyed, shall forfeit the net and ten shillings, to be levied by distress. But it is provided, that nothing in this act shall restrain the taking of herrings, pilchards, sprats, or lavidarian, with nets of a lesser mesh; and further that it shall not extend to Angle-sea." (5)

† Sect. 104. By 1 Geo. 1. st. c. 18. "Whoever shall use at sea upon the English coast any haul-net, drag-net, or set-net, for catching any fish, except herrings, pilchards, sprats or lavidarian, of less than three inches and a half mesh, from knot to knot; or which hath a false or double bottom; or shall put one net behind another; he shall, on conviction before one justice, on the oath of two witnesses, in one month after the offence, forfeit the same and twenty pounds, half to the informer and half to the poor, by distress, and for want of sufficiency to be committed for twelve months, and the nets to be burnt: but an appeal may be made to the next sessions."

† Sect. 105. By 1 Geo. 1. st. 2. c. 18. "If any person shall bring to shore or expose to sale any fish less than the following sizes from the eyes to the extent of the tail, viz. brett or turbot sixteen inches; brill or pearl fourteen; codlin twelve; whiting six; bass and mullet twelve; sole, plaice, and dab, eight; flounder seven; he shall forfeit the fish to the poor, and twenty shillings, half to the informer, and half to the poor, to be levied as aforesaid, and for default or insufficiency to be severely whipped, and kept to hard labour from six to fourteen days. Appeal to next sessions."

† Sect. 106. By 33 Geo. 2. c. 2. "Brett, turbot, brill, or pearl, although under the same dimensions, may be exposed to sale so as the same be not sold by retail for above six-pence per pound; and if any greater price shall be demanded or taken, or such fish shall not be weighed or measured if required, the same shall be forfeited, and the offender shall pay twenty shillings, to be recovered, &c. as before directed; and the money paid for the purchase of such fish shall be returned to the party."

† Sect. 107. By 9 Geo. 2. c. 33. s. 4. "No person shall take, kill, or destroy, any lobsters on the coast of Scotland, from the first of June to the first of September, on pain of five pounds, on conviction before two justices of the shire on the coast where the offence shall be committed." (6)

As to the THIRD PARTICULAR, viz. Respecting the importation of fish.

† Sect. 108. By 18 Car. 2. c. 2. "If any ling, herring, cod, or pilchard, salmon, eels, or congers, taken by foreigners, shall be imported or exposed to sale, any person may seize the same, to be divided equally between the informer and the poor."

† Sect.

(5) For the preservation of fish in the service of fish within the bills of mortality, vide 10 and 11 Geo. 2. c. 24. s. 11. 9 Ann. c. 26. 22 Geo. 2. c. 49. 29 Geo. 2. c. 39. 30 Geo. 2. c. 21.

† *Sect. 109.* By 1 Geo. 1. c. 18. and 9 Geo. 2. c. 33. "No fish taken by or received of any foreigner, except protestants inhabiting in England, shall be imported (except eels, stockfish, anchovies, sturgeon, botargo, or caveao, lobster, and turbot), on pain of one hundred pounds, and the master of the vessel fifty pounds, half to the poor, and half to the informer, who shall sue in twelve months in any of the courts at Westminster." (7)

SEVENTHLY, As to bacon and pork.

† *Sect. 110.* By 18 Car. 2. c. 2. "If any beef, pork, or bacon, for sale, shall be imported, they may be seized, and shall be forfeited, one half to the poor, and the other to the person who shall seize the same: and by the 20 Car. 2. c. 7. those who shall seize the same are indemnified."

† *Sect. 111.* By 12 Car. 2. c. 4. s. 11. "When beef, pork, and bacon, do not exceed, viz. beef five pounds the barrel, pork six pounds ten shillings the barrel, and bacon sixpence a pound in price, at the ports from whence they are laden, and at the time of their lading, the same may be shipped, carried out, and exported."

† *Sect. 112.* By 22 Car. 2. c. 13. s. 4. "Beef, pork, and bacon, may be exported by native or foreigner, although the same do exceed the prices above-mentioned at the ports, &c. at the time of their lading."

† *Sect. 113.* By 3 Will. and Mary, c. 8. "All sorts of beef, pork, or hogs'-flesh, may be exported into any part of the world in amity with the crown, free from any custom or imposition whatsoever."

Vide 3 and 4  
Will. and Mary,  
c. 8.

† *Sect. 114.* By 4 Will. and Mary, c. 5. s. 2. "Four-pence shall be paid for every pound of bacon imported."

† *Sect. 115.* By 5 Will. and Mary, c. 2. s. 4. "The said sum shall be paid from the first day of the session."

† *Sect. 116.* And by 3 Geo. 2. c. 20. s. 16. "Beef or pork salted with foreign salt shall receive on exportation one shilling and sixpence per barrel."

EIGHTHLY, As to hay and straw.

† *Sect. 117.* It is enacted by 2 Will. and Mary, s. 2. c. 8. s. 16. "That every truss of old hay brought or offered to be sold within the bills of mortality, between first August and first June, shall contain and be the full weight of fifty-six pounds at least; and that every truss of hay brought or offered to be sold, as aforesaid, between first June and first August, being new hay of that summer's growth, shall be and contain the full weight of sixty pounds, and old hay of any former year's growth, the weight of fifty-six pounds as aforesaid; and if any hay shall be brought, or offered to be sold as aforesaid, whereof any truss shall be of less weight than

(7) For the law respecting the salting of fish, vide the British herring fishery, vide 28 Geo. 2. c. 14.

turn's Justice, tit. "Fish and Fisheries," and for

“ than aforesaid, the person so bringing or offering such hay to be sold, shall forfeit for every truss, not being the full weight, eighteen-pence.”

† Sect. 118. By 31 Geo. 2. c. 40. “ All straw which shall be sold or delivered in, or brought to, or exposed to sale in London, or within the bills of mortality, shall be sold and delivered in bundles or trusses, firmly bound up, and of the full weight of thirty-six pounds of good and sound straw, exclusive of any other thing which shall be put therein; and whoever shall bring into, or expose to sale, in London, or within the bills of mortality, or in any place within the distance of thirty miles from the extent of any part of the limits of the said bills of mortality, when straw shall be sold in bundles or trusses, any bundle or truss of straw which shall be of less weight than thirty-six pounds of good and sound straw, or which shall be in the inside of a different quality or goodness from which on the outside it shall appear to be, shall forfeit twenty-pence for every offence, and the sum of one shilling for every bundle or truss of straw.”

Sect. 119. By 31 Geo. 2. c. 40. s. 2 and 3. “ Every truss of hay shall be made up in like manner as the straw aforesaid, and such hay only as shall be good shall be deemed and taken to be the hay which is to make up the weight every truss of hay by law ought to be; and also the pair of bands with which any truss of hay shall be bound, shall not exceed the weight of five pounds, upon pain of forfeiting for every offence one shilling.”

† Sect. 120. By 31 Geo. 2. c. 40. s. 4. “ Whoever shall bind hay contrary to the directions of this act, shall forfeit three-pence for every bundle or truss of hay or straw, if objected to within twenty-four hours by the proprietor.”

† Sect. 121. By 31 Geo. 2. c. 40. s. 5. “ No person who shall act as a common salesman in selling hay or straw for any other person for gain or reward, or by commission in London, or within the bills of mortality, shall directly or indirectly buy any hay or straw on his own account, other than what he shall purchase to spend for his own use; and if any such person shall buy any hay or straw on his own account to sell again, or shall sell in London, or within the bills of mortality, any hay or straw which shall have been brought by him on his account, shall forfeit one shilling for every truss.”

N.B. For the regulation of the markets with respect to the sale of these articles, vide the 6, 7, 8, 9, and 10 sections of the act.

NINTHLY, As to fruit.

† Sect. 122. By 1 Ann. st. 1. c. 15. s. 1. “ The measure commonly called water-measure shall be round, and in diameter eighteen and a half inches within the hoop, and eight inches deep, and no more, and so in proportion for any greater or lesser measure; and every such measure by which apples and pears are sold, shall be heaped as usually; and whoever shall buy or sell apples or pears by or with any other measure, shall forfeit ten shillings for every offence, half to the informer, and half to the poor, on conviction by one witness, before one magistrate, to be levied by warrant of distress. But this act shall not extend

“ extend to measures sealed and allowed by the Company of  
 “ Fruiterers of London, which are used in the said city, or within  
 “ three miles thereof.”

TENTHLY, As to honey and wax.

† *Sect. 123.* It is enacted, by 23 Eliz. c. 8. “ That whoever,  
 “ in the making and melting of wax, shall mix or mingle the same  
 “ with rosin, tallow, turpentine, or any other deceitful thing, to the  
 “ intent to sell the same, or to offer the same to be sold or uttered  
 “ for wax, shall forfeit the same; and if the same shall happen to  
 “ be sold before the corruption is discovered, the melter, mingler,  
 “ or corrupter, or the causer or procurer thereof, shall forfeit for  
 “ every pound two shillings, half to the queen, half to the party  
 “ deceived, if he will sue for it, or any other person that will sue  
 “ for the same in any of the queen’s courts of record.”

† *Sect. 124.* By 23 Eliz. c. 8. s. 2. “ Every melter and maker-  
 “ up of unwrought wax shall have a stamp of the breadth of six-  
 “ pence, wherein two letters shall be plainly graven, signifying his  
 “ name and surname, with which every piece of wax shall be  
 “ printed or stamped triangle in three places, upon the outside of  
 “ the upper part of every piece so melted and cast, on pain to  
 “ forfeit the value of every piece of cake sold, or offered to be  
 “ sold, and not so stamped or marked.”

† *Sect. 125.* By 23 Eliz. c. 8. s. 3. “ Whoever shall melt, mix,  
 “ work, or sell any wrought wax, or any stuff or wares wrought  
 “ with wax, shall have a stamp or seal set to his work, that it may  
 “ be known who were the workers thereof, on pain of forfeiting  
 “ the same, half to the queen or party deceived, &c. as before  
 “ mentioned.”

† *Sect. 126.* By 23 Eliz. c. 8. s. 3. “ All barrels, kilderkins,  
 “ and firkins, filled with honey by the maker and filler, shall be  
 “ marked with two letters standing for his name and surname,  
 “ each letter of an inch and a half in length at least, burnt upon  
 “ the head of the cask with a hot iron, upon pain of six shillings  
 “ and eight-pence for every package sold, or offered to be sold,  
 “ and not so marked.”

† *Sect. 127.* By 23 Eliz. c. 8. s. 4. “ Whoever shall fill and  
 “ sell, or caused to be filled and sold, or offered to be sold, any  
 “ barrel, kilderkin, or firkin, with honey, for or in the name of a  
 “ barrel, kilderkin, or firkin, containing less than thirty-two wine  
 “ gallons the barrel, sixteen wine gallons the kilderkin, and eight  
 “ wine gallons the firkin, shall forfeit for every half gallon so lack-  
 “ ing, five shillings. And whoever shall corrupt the honey so sold  
 “ with any deceitful mixture, shall forfeit the barrel or vessel, and  
 “ the honey therein, to be divided between the queen and prose-  
 “ cutor.”

† *Sect. 128.* By 23 Eliz. c. 8. s. 5. “ This act shall not extend  
 “ to persons selling the wax of their own bees, in small pieces in  
 “ open market, nor to servants employed by their masters in ming-  
 “ ling, &c. so as they will confess the same.”

† *Sect.*

† *Sect. 129.* And by 23 Eliz. c. 8. s. 5. "Whoever shall counterfeit any of the stamps or marks above-mentioned, or shall use the marks of another, shall forfeit five pounds, to be recovered and divided as aforesaid, and for non-sufficiency of payment to be set on the pillory in the next market town, and suffer three months' imprisonment."

ELEVENTHLY, As to coals.

† *Sect. 130.* By 12 Ann. st. 2. c. 17. "The coal-bushel shall be made round with a plain and even bottom, nineteen and one half inches in diameter, and to contain one Winchester bushel, and one quart of water; a brass standard of which bushel shall be kept in the exchequer."

† *Sect. 131.* By 16 and 17 Car. 2. c. 2. "All sea-coal brought into the Thames shall be sold by the chaldron, containing thirty-six bushels heaped up, and according to the bushel sealed for that purpose at Guildhall, and so for a greater and lesser quantity; and all other sorts of coals, sold by weight and not by measure, shall be sold after the proportion of an hundred and twelve pounds avoirdupois to the hundred weight, upon pain of forfeiture, and of double the value, on conviction by one justice where the offence shall be committed, half to the prosecutor, and half to the poor, or to the surveyor of the highways, as the magistrate shall direct.

The coal trade in London and parts adjacent is regulated by the 17 Geo. 3. sess. 2. c. 68. for the particulars of which the reader is referred to Burn's Justice, tit. "Coals."

## CHAP. XXX.

### OFFENCES AGAINST THE PUBLIC REVENUE.

1. SMUGGLING.
2. Using forged excise paper, fraudulent permits, &c.
3. Transposing stamps on plate.
4. Taking false oaths, when oath required by any act relative to the duties of excise.
5. Embezzlement of public money by collectors.

#### 1. *Smuggling.*

† Smuggling consists in bringing on shore, or in carrying from the shore, goods, wares, or merchandize, for which the duty has not been paid, or of goods of which the importation or exportation is prohibited. This offence is productive of various mischiefs to society. The public revenue is thereby lessened; the fair

4 Comm. 155.  
4 Bac. Ab. 523.  
543.  
1 Comm. 317.  
Beccar. c. 33.  
8 Mod. 5.

- (a) 5 Geo. 1.  
c. 11.  
6 Geo. 1. c. 21.  
9 Geo. 2. c. 35.  
13 & 14 Car. 2.  
c. 11.  
8 Geo. 1. c. 18.

fair trader is injured, and the nation impoverished; rival and perhaps hostile states are thereby enriched; and the persons guilty thereof being hardened by a course of disobedience to and defiance of law, behave so abandoned and daring as not to hesitate at being guilty of the greatest offences. It is therefore restrained by a great variety of statutes (a), which inflict pecuniary penalties, and seizure of the goods, for clandestine smuggling; and affix the guilt of felony with transportation for seven years, upon more open, daring and avowed practices.

I shall consider,

1. Of the offences of smuggling, and resisting revenue-officers.
2. In what cases smugglers may be required, by proclamation, to surrender themselves.
3. In what county the offence of smuggling may be tried.

As to the FIRST POINT, viz. Of the offences of smuggling, and resisting revenue-officers in the execution of their duty.

Persons passing with foreign goods landed without entry, and being more than five, and resisting officers, &c. to be transported.

† Sect. 2. By 8 Geo. 1. c. 18. s. 6. "All and every person and persons who shall be found passing (knowingly and willingly) with any foreign goods or commodities landed from any ship or vessel, without the due entry and payment of the duties by law charged thereon, in his, her, or their custody, from any of the coasts of this kingdom, or within the space of twenty miles of any of the said coasts, and shall be more than five persons in company, or shall carry any offensive arms or weapons, or wear any vizard, mask, or other disguise, when passing with such goods or commodities as aforesaid, or shall forcibly hinder or resist any of the officers of the customs or excise in the seizing or securing any sorts or kinds of run goods or commodities, shall be deemed and taken to be runners of foreign goods and commodities within the meaning of this present act, and (being convicted of or for any of the said offences, for which he, she, or they so convicted are by this present act declared to be deemed and taken to be runners of foreign goods and commodities) shall be adjudged guilty of felony, and shall, for such his, her, or their offence, be transported as a felon to some or one of his majesty's colonies or plantations in America, there to remain for the space of seven years."

Any justice, on information upon oath, that three or more persons are assembled together, armed, &c. may grant a warrant for apprehending them,

† Sect. 3. By 9 Geo. 2. c. 35. s. 10. it is recited, "That divers dissolute and disorderly persons frequently appear in great gangs near the sea-coasts and the shores of navigable rivers, and in and about the towns and villages adjacent thereto, and in divers other parts of this kingdom, carrying fire-arms or other offensive weapons, to the great terror of his majesty's subjects, and the hindrance of the civil officers, and the officers of the customs and excise, in the execution and discharge of their duty, and during their abode there commit great spoil and devastation to the estates thereabouts, in order to be aiding and assisting in the clandestine running, landing, or carrying away prohibited and uncustomed goods, and to rescue the same after seizure from the officers of the customs

customs or excise, and to watch for proper opportunities for that purpose; and that several officers of the revenue and others their assistants have been wounded, maimed, and some of them murdered in the execution of their office, and great quantities of run goods have been rescued after seizure, and sheriffs and other civil officers have been forcibly hindered from the execution of process: and therefore enacted, "That upon information to be given upon oath before any one or more of his majesty's justices of the peace in any county, city, or liberty whatsoever, that any persons to the number of three or more are or have been assembled for any of the purposes aforesaid, and are or have been armed with fire-arms or other offensive arms or weapons; such justice or justices of the peace shall and may grant his or their warrant to the constables, headboroughs, and other peace-officers whatsoever, or any of them, requiring such officer and officers respectively, to take to his and their assistance as many of his majesty's subjects as may be thought necessary for the apprehending all and every person and persons against whom such information shall be given as aforesaid, and such justice or justices of the peace shall and may (if upon due examination he or they find cause) commit all and every or any of the said person and persons to the next county gaol, there to remain without bail or mainprise until he, she, or they shall be discharged by due course of law; and all and every such person and persons, upon due proof of his, her, or their being assembled and armed as aforesaid, in order to be aiding and assisting in the clandestine running, landing, rescuing, or carrying away prohibited or uncustomed goods, and upon conviction of and for such offence, shall be adjudged guilty of felony, and shall be transported as a felon or felons to some or one of his majesty's colonies or plantations in America, there to remain for the space of seven years."

and commit them to the county gaol; upon conviction they shall be transported for 7 years.

† Sect. 4. By 9 Geo. 2. c. 35. s. 28. it is recited, "That the punishment to which such persons as shall forcibly obstruct or hinder any officer of the customs or excise, being on board any ship, boat, or vessel, within the limits of any of the ports of this kingdom, are liable by law, hath proved insufficient:" and therefore it is enacted, "That if any officer or officers of the customs or excise, being on board any ship, boat or vessel, within the limits of any of the ports of this kingdom, be forcibly hindered, opposed, obstructed, wounded or beaten, in the due execution of his or their office or duty, by any person or persons whatsoever, either in the day or night, all and every person and persons so forcibly hindering, opposing, obstructing, wounding or beating the said officer or officers in the execution of his or their office, and all such as shall act in their aid or assistance, being convicted thereof, shall by order of the court before whom such offender or offenders shall be convicted, be transported to some of his majesty's colonies and plantations in America, for such term as such court shall think fit, not exceeding seven years."

Persons forcibly obstructing or wounding officers on board ships, &c. in the execution of their offices, to be transported.

† Sect. 5. By 11 Geo. 2. c. 26. s. 2. "for laying a duty upon retailers of spirituous liquors, and for licensing the retailers thereof," it is enacted, "That if any persons, to the number of five or

Rescuing offenders against the said act, or assaulting informers felony.

more,



" more, shall, in a tumultuous and riotous manner, assemble themselves to rescue any offender or offenders against the said first-mentioned act; or to assault, beat, or wound any person or persons who shall have given, or be about to give, any information or evidence against, or shall have discovered or given evidence against, or be about to discover or give evidence against, seize, or bring to justice any person or persons offending against the said first-mentioned act; that then all and every person or persons so assembling themselves, and their aiders and abettors, being thereof lawfully convicted, shall be, and be adjudged to be, guilty of felony; and every such felon and felons shall be subject and liable to the like pains and penalties as in cases of felons; and the courts by and before whom he, she, or they shall be convicted, shall have full power and authority of transporting such felon and felons for the space of seven years."

Armed persons to the number of three, assembled to assist in the illegal exporting or running of goods, &c. or appearing in disguise with such goods, or who shall resist, &c. officers in the execution of their duty, are guilty of felony without benefit of clergy.

† Sect. 6. By 19 Geo. 2. c. 34. it is recited, " That divers dissolute persons have associated themselves, and entered into confederacies to support one another, and have appeared in great gangs in several parts of this kingdom, carrying fire-arms, or other offensive weapons; and when so assembled, have been aiding and assisting in running, landing, or carrying away prohibited or uncustomed goods, or goods liable to duties of excise, or in the illegal relanding of any goods or merchandizes, which have been shipped or exported upon debenture or certificate, or in rescuing the same after seizure, or in obstructing the officers of the revenue in the execution of their office, to the great discouragement of the fair trader, and the loss of the public revenue: And whereas several officers of the customs and excise, and their assistants, have been wounded, maimed, and some of them killed, when in the execution of their office or otherwise, by the said dissolute persons so associated and assembled as aforesaid, to the great terror of his majesty's peaceable subjects, in defiance of the laws, and to the utter subversion of all civil authority and power whatsoever:" it is therefore enacted, " That if any persons, to the number of three or more, armed with fire-arms or other offensive weapons, shall be assembled, in order to be aiding and assisting in the illegal exportation of wool or other goods prohibited to be exported, or the carrying of wool or other such goods, in order to such exportation, or in the running, landing, or carrying away prohibited or uncustomed goods, or goods liable to pay any duties, which have not been paid or secured; or in the illegal relanding of any goods whatsoever, which have been shipped or exported upon debenture or certificate; or in rescuing or taking away the same, after seizure, from any officer or officers of the customs or excise, or other his majesty's revenue, or other person or persons employed by him or them, or assisting him or them, or from the place where they shall be lodged by him or them; or in rescuing any person who shall be apprehended for any of the offences made felony by this or any other act, relating to the revenues of customs or excise; or in preventing the apprehending any person who shall be guilty of any such offence; or in case any persons to the number of three or more, so armed as aforesaid, shall be so aiding or assisting; or if any person " shall

"shall have his face blacked, or wear any vizard, mask, or other disguise, when passing such goods, or shall forcibly hinder, obstruct, assault, oppose, or resist any of the officers of the customs or excise, or other his majesty's revenue, in the seizing or securing any such goods; or if any person or persons shall maim or dangerously wound any officer of the customs or excise, or any other his majesty's revenue, in his attempting to go on board any ship or vessel, within the limits of any of the ports of this kingdom; or shoot at, maim, or dangerously wound him when on board such ship or vessel, and in the due execution of his office or duty, then every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy, (1) and that all and every person and persons who shall at any time be convicted of any of the offences aforementioned, within that part of Great Britain called Scotland, shall for every such offence incur and suffer the pains of death and confiscation of "moveables."

Under this statute the following determinations have been made.

† *Sect. 7.* It seems agreed, that, in order to bring an offender within the penalties of this act, there must be an assembling of three persons or more for the purpose of committing some or one of the offences described in the statute.

Rex v. Spice,  
Old Bailey  
Dec. Session,  
1785. Cases,  
C. L. 281.

† *Sect. 8.* It is also said, (a) that to bring the offenders within the penalties of the first clause of the above statute, they must be armed with offensive weapons; but it is also said, that it is not necessary that every individual assembled should be provided with an offensive weapon (b); and yet it seems (c) that it must appear on the trial that the prisoner was armed with an offensive weapon.

(a) Hutchin-  
son's Case,  
Cases, C.L. 280.  
(b) Franklyn's  
Case, Cald. 244.  
(c) Fletcher's  
Case, Cases,  
Cro. Law, 281.  
*notis.*

† *Sect. 9.* It has also been said, that the weapons must be such as are calculated for the purposes of offence; therefore where one man had only a common horsewhip, although all the rest of the gang had fire-arms, the Attorney-general declined to argue the point, and the prisoner was discharged. So also a hatchet has been thought no offensive weapon within this act, where it was only caught up upon the spur of the occasion, and belonged to the prisoner in the way of his business. So also a large stick with three natural prongs and a large head has been held no offensive weapon. But it is impossible for the law to draw a precise line which will hold in all cases as to what shall, or shall not, be called an offensive weapon. It must greatly depend on the circumstances of the case; for it would be going a great deal too far to say that nothing but guns, pistols, daggers, and instruments of war should be considered as offensive weapons; bludgeons, clubs, and any thing not in common use, pokers, shovels, tongs, &c. and even a common walking-stick, may be offensive weapons, according to the circumstances which accompany the use of them. It is therefore a question of fact for the jury, whether the instrument was carried for the purposes of offence or not?

Stra. 1166.  
O. B. 1786.  
p. 857.  
O. B. 1785,  
p. 424.  
O. B. 1785,  
p. 780.  
Cases in Cro.  
Law, 280.

† *Sect.*

(1) See postea, the statute 52 Geo. 3. c. 143.  
"for reducing into one act all the provisions now

in force inflicting the penalty of death for any act  
done in breach of the revenue laws." p. 668.

Hutchinson's  
Case, Cases  
Cro. Law, 280.

† Sect. 10. It is said, that the third branch of the above statute, viz. "or if any person shall have his face blacked, or wear any vizard, mask, or other disguise when passing with such goods," has, apparently, no regard to the number of persons, nor to their being armed with offensive weapons; and therefore that an individual passing disguised with uncustomed goods would, in all probability, be deemed within the penalties of the act: and also that the fourth branch of the statute, viz. "or shall forcibly hinder, obstruct, assault, &c." being coupled by the word "or" to the preceding section, seems to be a clause that would reach any individual who shall forcibly hinder or obstruct a revenue-officer in the execution of his duty. But it is also said, that as the statute 19 Geo. 3. c. 69. s. 10. has reduced this offence to a misdemeanor, the clause in the statute 19 Geo. 2. c. 34. is virtually repealed.

Any person who  
shall obstruct  
any officer in  
seizing goods;

† Sect. 11. By 19 Geo. 3. c. 69. s. 10. it is further enacted, "That if any person or persons whatsoever shall assault, resist, oppose, molest, obstruct, or hinder, any officer or officers of the customs or excise in due seizing or securing any coffee, tea, cocoa-nuts, chocolate, foreign brandy, or other foreign spirituous liquors, or any other goods whatsoever which by any officer or officers of the customs or excise shall or may be liable to be seized by virtue of or in pursuance of any act now in force; or shall by force or violence rescue, or shall cause to be rescued, any of the said goods, after the same shall have been seized by such officer or officers as aforesaid, or shall attempt or endeavour so to do; or, after such seizure, shall cut, stave, break, or otherwise destroy or damage any casks, vessels, boxes, or package, wherein the same respectively shall be contained; it shall and may be lawful to and for the officers of the customs and excise, and for all persons acting in their aid and assistance, to stop, arrest, and detain, all and every the person and persons so offending, and him, her, or them, forthwith to carry and convey before one or more of his majesty's justices of the peace, near to the place where the offence shall be committed or done; and the justice or justices shall, if he or they see cause, commit the person or persons, so brought before him or them, to the next county gaol, until the next general quarter-sessions of the peace to be holden for the same county or place, there to be tried and dealt with as by this act is in hereinafter directed."

or shall attempt  
to rescue the  
same; or shall  
damage any  
casks, &c. in  
which such  
goods shall be  
contained; may  
be arrested, &c.

If any person  
shall maliciously  
shoot at any  
ship, &c. or any  
officer when in  
execution of  
duty, he shall  
suffer death as  
a felon.

† Sect. 12. By 24 Geo. 3. c. 47. s. 11. it is further enacted, "That if any person or persons upon the shore, or on board any ship, vessel, or boat, shall maliciously shoot at or upon any ship, vessel, or boat, belonging to his majesty's navy, or in the service of the customs or excise, within the limits of any port, harbour, or creek of Great Britain, or within four leagues from any part of the coast thereof; or if any person or persons, being on shore, or on board any ship, vessel, or boat, shall maliciously shoot at, maim, or dangerously wound any officer or officers of his majesty's navy, or of the customs or excise, whether attempting to go on board, or being on board, or returning from on board any ship, vessel, or boat, or otherwise acting in the due execution of his or their duty on shore, or within the limits of any port, harbour, or creek of Great Britain, or within four leagues  
" of

" of any part of the coast thereof; or shall maliciously shoot  
 " at, maim, or dangerously wound, any person or persons aiding  
 " and assisting such officer or officers in the execution of his or  
 " their duty as aforesaid; then every person so offending, and all  
 " and every person being aiding, abetting, or assisting therein,  
 " shall, being thereof lawfully convicted, be adjudged guilty of fe-  
 " lony, and shall suffer death as a felon without benefit of clergy."

† Sect. 13. By 24 Geo. 3. c. 47. s. 15. it is further enacted,  
 " That if any officer or officers of his majesty's navy, or in the ser-  
 " vice of the customs or excise, being on shore, or going on board,  
 " or being on board, or returning from on board, any ship, boat,  
 " or vessel, within the limits of any of the ports of this kingdom,  
 " or within four leagues from the coasts thereof, shall be hindered,  
 " opposed, obstructed, or assaulted, in the due execution of his or  
 " their office or duty by any person or persons whatsoever, either  
 " in the day-time, or night; all and every person or persons so  
 " hindering, opposing, obstructing, or assaulting the said officer or  
 " officers in the due execution of his or their duty, and all such as  
 " shall act in his or their aid or assistance, shall and may be car-  
 " ried or conveyed before one or more of his majesty's justices of  
 " the peace residing near to the place where such offence shall be  
 " committed; and such justice or justices shall, if he or they see  
 " cause, commit such person or persons to the next county gaol,  
 " there to remain until the next court of oyer and terminer, great  
 " session, or gaol-delivery, or until such person shall be delivered  
 " by due course of law; and in case an indictment shall be found  
 " against him or them, he or they shall plead thereto, without  
 " having time to traverse the same, as is usual in cases of misde-  
 " meanors: and being duly convicted thereof, shall, by order of  
 " the said court before whom such offender shall be convicted, be  
 " sentenced to hard labour on the river Thames, or other navi-  
 " gable river in that part of Great Britain called England, for any  
 " term not exceeding three years, according to the directions of an  
 " act passed in the nineteenth year of his present majesty's reign,  
 " intituled, ' An Act to explain and amend the laws relating to the  
 " transportation, imprisonment, and other punishment, of certain  
 " offenders,' and as is by the said act directed for the punishment  
 " of persons convicted of grand larceny; or such court may order  
 " such offender to be committed to the common gaol, or house of  
 " correction, for any term not exceeding three years."

Persons ob-  
 structing offi-  
 cers of the  
 navy, &c. in the  
 execution of  
 their duty, may  
 be carried be-  
 fore a justice,  
 who may com-  
 mit them.

Penalty on  
 conviction.

19 Geo. 3. c. 74.

The statute 47 Geo. 3. s. 2. c. 66. " for the more effectual pre-  
 " vention of smuggling," enacts (s. 34.) " That from and after the  
 " passing of this act, no person or persons shall, after sun-set and  
 " before sun-rise between the 21st of September and 1st of April,  
 " or after the hour of eight in the evening and before the hour of  
 " six in the morning between the last day of March and the 22d  
 " day of September, make, or aid or assist in the making, any  
 " light, fire, flash, or blaze, or any signal by smoke, or by any  
 " rocket, fire-works, flags, firing of any gun or other fire-arms, or  
 " any other contrivance or device, in or on board or from any ship,  
 " vessel, or boat, or on or from any part of the coast or shores of  
 " Great Britain, or within six miles of any part of such coast or  
 " shores, for the purpose of making or giving any signal to any  
 " person

Persons making  
 signals to smug-  
 glers by fire,  
 smoke, &c. or  
 otherwise, guilty  
 of a misde-  
 meanor.

" person or persons on board any smuggling ship, vessel, or boat, " whether such person or persons so on board of such ship, vessel, " or boat, be or be not within sight or distance to see or hear any " such light, fire, flash, blaze or signal; and if any person or per- " sons shall, contrary to the true intent and meaning of this act, " make, or cause to be made, or aid or assist in the making, or be " present for the purpose of aiding or assisting in making any such " light, fire, flash, blaze, or signal, such person or persons so of- " fending shall be guilty of a misdemeanor, and it shall be lawful " for any officer or officers of the customs or excise, or any other " person or persons, to stop, arrest, and detain the person or per- " sons who shall so make, or aid or assist in the making, or who " shall be present for the purpose of aiding or assisting in making " any such light, fire, flash, blaze, or signal, and to carry and con- " vey such person or persons so offending as aforesaid, before any " one or more of his majesty's justices of the peace residing near to " the place where such offence shall be committed, who, if he or " they see cause, shall commit the offender or offenders to the next " county gaol, there to remain until the next court of oyer and ter- " miner, great sessions, or gaol delivery, or until such person or " persons shall be delivered by due course of law: and in case an " indictment shall be found or information filed against him or " them, he or they shall forthwith plead thereto and shall be tried " thereon without having time to traverse the same, as is usual in " cases of misdemeanor; and it shall not be necessary to prove in " any such indictment or information, that any ship, vessel, or " boat was actually hovering or off the coast or shore, or found or " discovered to have been within any limits or distances mentioned " in this act, or any act or acts passed for the prevention of smug- " gling, and the offender or offenders, being duly convicted thereof, " shall, by order of the court before whom such offender or of- " fenders shall be convicted, either forfeit and pay the penalty or " forfeiture of one hundred pounds, or at the discretion of such " court be sentenced to or committed to the common gaol or house " of correction, there to be kept to hard labour for any term not " exceeding one year."

52 Geo. 3. c. 143.

By statute 52 Geo. 3. c. 143. intitled " An act for amending and reducing into one act the provisions contained in any law now in force imposing the penalty of death for any act done in breach of or in resistance to any part (2, of the laws for collecting his majes- ty's

(2) The stat. of 52 Geo. 3. c. 143. by sect. 1. enacts, " That in all cases where any act done in " obstruction or resistance of the revenue laws " would be felony, without benefit of clergy, by " virtue of the said laws, or any of them, such act " shall be taken to be felony, within benefit of " clergy, unless the same shall be declared to be " felony without benefit of clergy by that act," The act then declares the following offences to be without benefit of clergy: 1. The secreting, embezzling, &c. of letters by servants of the post-office, containing securities for money. 2. Stealing letters from persons employed by post-office to carry letters, or from out of any post-office, or out of any bag or mail; or being ac- cessary before the fact to such offences; or buy- ing or receiving any of the stolen securities. 3. Forging the mark or hand of the receiver of the

prefines at the alienation office. 4. Forging, &c. certificates for the redemption of the land tax. 5. Forging, &c. any mark, stamp, die, or plate, used under the direction of the commissioners for ma- naging the duties on stamped vellum, parchment, or paper, denoting the payment of duties, or ex- posing or selling any articles knowing it to have a forged stamp. 6. Forging, &c. the stamps on gold and silver plate. 7. Making, &c. frames for making paper with the word " EXCISE OFFICE" visible in the substance of the paper, without due appoint- ment and authority; or making any stamp or die to imitate the stamps used by the direction of the commissioners of excise in England or Scotland for marking permits. 8. Forging debentures for the payment or return of money, where the same are required by the excise laws. 9. Assisting in smug- gling in the manner above set forth.

ty's revenue in Great Britain, it is enacted, " That if any persons, " to the number of three or more, armed with fire-arms or other " offensive weapons, shall hereafter, within Great Britain, or " within the limits of any port, harbour, or creek thereof, or within " the Isle of Man, or within the limits of any port, harbour, or " creek thereof, be assembled in order to be aiding and assisting " in the illegal exportation of wool or other goods prohibited to " be exported; or in the carrying of wool or other such goods in " order to such exportation; or in the illegal running, landing, or " carrying away prohibited or uncustomed goods, or goods liable " to pay any duties which shall not have been paid or secured; or " in the illegal relanding of any goods whatsoever, which shall have " been shipped or exported upon debenture or certificate, or from " any warehouse wherein such wool or other goods shall have been " deposited under any act of parliament for the securing the home " consumption duties thereon; or in rescuing or taking away any " such wool or other goods as aforesaid after seizure from any offi- " cer or officers of the customs or excise, or other officer or officers " authorized to seize the same, or other person or persons employ- " ed by him or them, or assisting him or them, or from the place " where the same shall have been lodged by him or them; or in res- " cuing any person who shall have been apprehended for any of the " offences made felony by an act relating to the revenues or customs " or excise of Great Britain, or in preventing the apprehending any " person who shall have been guilty of any such offence; or in case " any persons, to the number of three or more, so armed as afore- " said, shall hereafter within Great Britain, or within the limits of " any port, harbour, or creek thereof, or within the Isle of Man, or " within the limits of any port, harbour, or creek thereof, be so aiding " or assisting; or if any person shall maliciously shoot at or upon " any ship, vessel, or boat, belonging to his majesty's navy, or in the " service of the customs or excise, within the limits of any port, " harbour, or creek of Great Britain, or within the Isle of Man, or " within the limits of any port, harbour, or creek thereof, or in any " port of the British or Irish Channels, or on the high seas within " one hundred leagues of the coast of Great Britain or Ireland; " or if any person shall, either on shore or on the water, within " the limits last aforesaid, maliciously shoot at, maim, or danger- " ously wound any officer or officers of his majesty's army, navy, " marines, militia, or volunteers, or any other his majesty's military " or naval forces, or of the customs or excise, or any other person " or persons aiding or assisting any such officer or officers when " acting in the due execution of his or their duty under any of the " powers, authorities, and provisions of any act relating to the " revenues of customs or excise of Great Britain, or of any act for " the prevention of smuggling; every person so offending, and " every person aiding, abetting, or assisting therein, shall, being " thereof convicted, be adjudged guilty of felony, and shall suffer " death as a felon, without benefit of clergy; and every such of- " fence which shall be committed within any port, harbour, creek, " haven, or roadstead, of Guernsey, Jersey, Alderney, Sark, or " Man, respectively, the same may and shall be inquired of, " tried, and determined in the said islands respectively; and every " such offence committed elsewhere out of the United Kingdom " may

"may and shall be inquired of, tried, and determined in any county of the United Kingdom; and every such offence committed within England, Scotland, or Ireland, respectively, may and shall be inquired of, tried, and determined within such part of the said United Kingdom in which offence shall have been respectively committed, but (3) in any county or shire of such part of the said United Kingdom, in such manner and form as if the offence had been committed in the county or shire in which the same shall be inquired of, tried, and determined." *Sect. 11.*

By 52 Geo. 3. c. 143. s. 12. where any person is charged before any justice of the peace or other competent person, upon oath, with being guilty of assembling in the illegal manner described, and of shooting, maiming, or wounding, in any case where the officer or any one assisting him is killed, the information is to be certified by the justice or person taking it to one of his majesty's principal secretaries of state; who is forthwith to lay the same before his majesty in council; and thereupon his majesty, if he shall so think fit, may require the offender, within sixty days, or such other time as he shall think proper, after publication of such order in the London Gazette, to surrender himself to the lord chief justice of the court of king's bench, or any other justice of the king's bench, or any justice of the peace, or other person competent to take such surrender. By the same clause his majesty may further direct the order for surrender to be proclaimed by the sheriff in the county where the offence was committed, or if not committed in any county, by the sheriff of the county near where the offence was committed. And the clerks of the privy council are to cause such order to be forthwith inserted in the London Gazette, and the publication of the order for surrender to be repeated once a week, until the expiration of the sixty days, or such further time as is appointed by the order for the surrender; and the sheriff is to make proclamation of the order within fourteen days after the receipt of it in two market towns, on market days, between the hours of twelve and two, and cause a copy of the order to be affixed in some public place in each of such market towns; but if there is but one market town in the county, then in such one market town and some other place of general resort. If the party accused surrender himself, he is to be committed to prison, to be dealt with according to law; but if he shall not surrender himself within the time so limited, or shall, after surrender and before trial, escape from justice, such person shall, from the day appointed for such surrender, be adjudged a person attainted of felony, and shall suffer death as a felon, without benefit of clergy.

As to the SECOND POINT, viz. In what cases smugglers may be required, by proclamation, to surrender themselves.

† *Sect. 14.* By 19 Geo. 2. c. 34. s. 2. "And for the more easy and speedy bringing the offenders against this act to justice," it is enacted,

(3) The act here seems inaccurately worded, probably some words were omitted in the draft, or in the original printing.

enacted, "That if any person or persons shall be charged with being  
 "guilty of any of the offences aforesaid, before any one or more of  
 "his majesty's justices of the peace, or before one of his majesty's  
 "justices of the court of king's bench, if the offence be committed  
 "in England; or before the lord justice general, or one of the  
 "lords of justiciary, or any one or more of his majesty's justices of  
 "the peace in Scotland, if the offence be committed in Scotland;  
 "by information of one or more credible person or persons upon  
 "oath, by him or them to be subscribed, such justice of the peace,  
 "or justice of the king's bench, or lord justice general, lord justice  
 "clerk, or lord of justiciary, respectively, before whom such  
 "information shall be made as aforesaid, shall forthwith certify  
 "under his hand and seal, and return such information, to one of  
 "the principal secretaries of state of his majesty, his heirs or successors,  
 "who is hereby required to lay the same, as soon as conveniently may be,  
 "before his majesty, his heirs or successors, in his or their privy council;  
 "whereupon it shall and may be lawful for his majesty, his heirs or  
 "successors, to make his or their order, in his or their said privy  
 "council, thereby requiring and commanding such offender or offenders  
 "to surrender him or themselves within the space of forty days after the  
 "first publication thereof in the London Gazette, to the lord chief justice,  
 "or any other of his majesty's justices of the court of king's bench, or  
 "to any one of his majesty's justices of the peace, if the offence be  
 "committed in England; or to any of the lords of justiciary, or to any  
 "one of his majesty's justices of the peace in Scotland, if the offence  
 "be committed in Scotland; who is hereby required, upon such offender  
 "or offenders surrendering him or themselves, to commit him or them,  
 "without bail or mainprise, to the county gaol, or to the gaol or prison  
 "of the place where he or they shall so surrender, to the end that he  
 "or they may be forthcoming to answer the offence or offences  
 "wherewith he or they shall stand charged according to due course  
 "of law; which order the clerks of his majesty's privy council  
 "shall cause to be forthwith printed and published in the two  
 "successive London Gazettes, and to be forthwith transmitted to the  
 "sheriff of the county where the offence shall be committed,  
 "who shall, within fourteen days after the receipt thereof, cause the  
 "same to be proclaimed between the hours of ten in the morning  
 "and two in the afternoon, in the market-places, upon the respective  
 "market-days, of two market-towns, in the same county, near to the  
 "place where such offence shall have been committed; and a true  
 "copy of such order shall be affixed upon some public place in such  
 "market-towns: and in case such offender or offenders shall not  
 "surrender him or themselves, pursuant to such order of his majesty,  
 "his heirs or successors, to be made in council as aforesaid, he or they  
 "so neglecting or refusing to surrender him or themselves as aforesaid,  
 "or escaping after such surrender, shall, from the day appointed for  
 "his or their surrender as aforesaid, be adjudged, deemed, and taken  
 "to be convicted and attainted of felony, and shall suffer pains of death,  
 "as in case of a person convicted and attainted by verdict and judgment  
 "of felony, without benefit of clergy, if the offence be charged to  
 "have been committed in England; and shall be adjudged, deemed, and  
 "taken to be convicted of a capital

Persons charged upon oath with offences against this act.

Justice, &c. to certify information to one of the secretaries of state, who is to lay same before king in council. Orders to be made for offender's surrender in 40 days;

and commitment without bail.

Order to be published in two Gazettes, and transmitted to the sheriff, who shall proclaim the same.

Copy to be affixed in market-towns. Offenders not surrendering, &c. to be convicted of felony without clergy.

King's bench, or justices of oyer and terminer, &c. to award execution.



“ capital crime, and shall suffer the pains of death and confiscation of moveables, as in case of a person found guilty of a capital crime, and under sentence for the same, if the offence be charged to have been committed in Scotland; and that it shall be lawful to and for the court of king’s bench, or the justices of oyer and terminer, or general gaol delivery, for the county or place where such person shall be, to award execution against such offender and offenders, in such manner as if he or they had been convicted and attainted in the said court of king’s bench, or before such justices of oyer and terminer, or general gaol-delivery respectively, if the offence be charged to have been committed in England; and that it shall be lawful for the court of justiciary, or the lords of justiciary, in their circuits, to award execution against such offender and offenders, in such manner as if he or they had been found guilty and condemned in the said court of justiciary, or in the circuit, respectively.”

If any person be charged with any offence made felony by this act,

justice or judge shall certify and return information to one of the secretaries of state, &c.

† Sect. 15. By 24 Geo. 3. c. 47. s. 12. “ For the more easy and speedy bringing the offenders against this act to justice,” it is enacted, “ That if any person or persons shall be charged with being guilty of any of the offences aforesaid, made felony by this act, before any one or more of his majesty’s justices of the peace, or before one of his majesty’s justices of the court of king’s bench, if the offence be committed in England or Wales, or within the limits of any of the ports thereof, or within four leagues of the coasts thereof; or before any one of the lords of justiciary, or the judge of the high court of admiralty, or any judge ordinary, or judge admiral, deputy, or substitute, in Scotland, if the offence be committed within Scotland, or within the limits of any port of that part of Great Britain called Scotland, or within four leagues of the coast thereof, by information of one or more credible person or persons upon oath, by him or them to be subscribed; such justice of the peace, or justice of the king’s bench, or any lord of justiciary, or judge of the high court of admiralty, or judge ordinary, or judge admiral, deputy, or substitute respectively, before whom such information shall be made as aforesaid, shall forthwith certify, under his hand and seal, and return such information to one of the principal secretaries of state of his majesty, his heirs or successors; who is hereby required to lay the same, as soon as conveniently may be, before his majesty his heirs or successors, in his or their privy council; whereupon it shall and may be lawful for his majesty, his heirs, or successors, to make his or their order, in his or their said privy council, thereby requiring and commanding such offender or offenders to surrender him or themselves, within the space of forty days after the first publication thereof in the London Gazette, to the lord chief justice, or any other of his majesty’s justices of the court of king’s bench, or to any one of his majesty’s justices of the peace, if the offence be committed within England or Wales, or within the limits of any of the ports thereof, or within four leagues of the coast thereof; or to any of the lords of justiciary, or judge of the high court of admiralty, or judge ordinary, or judge admiral, deputy, or substitute, in Scotland, if the offence be committed within Scotland, or within the limits of any port of that part of Great Britain called Scotland, or with-

“ in

" in four leagues of the coast thereof; who is hereby required,  
 " upon such offender or offenders surrendering him or themselves,  
 " to commit him or them, without bail or mainprise, to the county  
 " gaol, or to the gaol or prison of the place where he or they shall  
 " so surrender, to the end that he or they may be forthcoming to  
 " answer the offence or offences, wherewith he or they shall stand  
 " charged, according to due course of law; which order the clerks  
 " of his majesty's privy council shall cause to be forthwith printed  
 " and published in two successive London Gazettes, and to be  
 " forthwith transmitted to the sheriff of the county where the of-  
 " fence shall be committed, if the same shall be committed in  
 " any county; and if the offence shall not be committed within  
 " any county, but within the limits of any port as aforesaid, or  
 " within four leagues of the coast of any part of Great Britain,  
 " to be transmitted to the sheriff of any county near to the place  
 " where such offence shall be committed; which respective sheriff  
 " shall, within fourteen days after the receipt thereof, cause the  
 " same to be proclaimed, within the hours of ten in the morning  
 " and two in the afternoon, in the market places, upon the respec-  
 " tive market days of two market towns in the same county in  
 " which, or near to the place where such offence shall have been  
 " committed; and a true copy of such order shall be affixed upon  
 " some public place in such market towns: and in case such of-  
 " fender or offenders shall not surrender himself or themselves  
 " pursuant to such order of his majesty, his heirs or successors, to  
 " be made in council as aforesaid, he or they so neglecting or re-  
 " fusing to surrender himself or themselves as aforesaid, or escaping  
 " after such surrender, shall, from the day appointed for his or their  
 " surrender as aforesaid, be adjudged, deemed, and taken to be con-  
 " victed and attainted of felony, and shall suffer the pains of death  
 " as in cases of a person convicted and attainted by verdict and  
 " judgment of felony, without benefit of clergy, if the offence be  
 " charged to have been committed within England or Wales, or  
 " within the limits of any of the ports thereof, or within four  
 " leagues of the coast thereof; and shall be adjudged, deemed, and  
 " taken to be convicted of a capital crime, and shall suffer the  
 " pains of death, and confiscation of moveables, as in case of a  
 " person found guilty of a capital crime, and under sentence for  
 " the same, if the offence be charged to have been committed with-  
 " in Scotland, or within the limits of any of the ports thereof, or  
 " within four leagues of the coast thereof; and that it shall be law-  
 " ful to and for the court of king's bench, or the justices of oyer  
 " and terminer, or general gaol delivery, or great sessions for the  
 " county or place where such person shall be, to award execution  
 " against such offender or offenders, in such manner as if he or  
 " they had been convicted and attainted in the said court of king's  
 " bench, or before such justices of oyer and terminer, or general  
 " gaol delivery, or great sessions respectively, if the offence be  
 " charged to have been committed within England or Wales, or  
 " within the limits of any of the ports thereof, or within four  
 " leagues of the coast thereof; and that it shall be lawful for the  
 " court of judicature, or the lords of judicature in their circuits, or  
 " the judge of the high court of admiralty, to award execution  
 " against such offender and offenders in such manner as if he or  
 " they

Order in coun-  
cil to be pub-  
lished, and trans-  
mitted to she-  
riffs, &c. who  
shall proclaim  
the same.

Offenders not  
surrendering  
themselves, to  
suffer death as  
felons, &c.

King's bench,  
&c. to award  
execution a-  
gainst such of-  
fenders in like  
manner as if  
they had been  
convicted in  
the said court,  
&c.

"they had been found guilty and condemned in the said court of  
 "justiciary, or in the circuit courts respectively, if the offence shall  
 "be charged to have been committed within Scotland, or within the  
 "limits of any of the ports thereof, or within four leagues of the  
 "coast thereof."

Any person  
 harbouring such  
 offenders, shall  
 on conviction be  
 guilty of felony,  
 and be trans-  
 ported for seven  
 years.

† Sect. 16. By 19 Geo. 2. c. 34. s. 3 and 4. and 24 Geo. 3. c. 47. s. 13 and 14. it is further enacted, "That all and every person and persons, who shall, after the time appointed as aforesaid for the surrender of any person or persons so charged upon oath with any of the offences aforesaid, shall be expired, harbour, receive, conceal, aid, abet, or succour such person or persons, knowing him or them to have been so charged as aforesaid, and  
 "to have been required to surrender him or themselves by such  
 "order or orders as aforesaid, and not to have surrendered pur-  
 "suant to such order or orders, being prosecuted for the same  
 "within one year after the offence committed, and lawfully con-  
 "victed thereof, shall be guilty of felony, and shall be transported  
 "as a felon or felons for the space of seven years, in the same  
 "manner as felons are or shall be appointed to be transported by  
 "virtue of any act or acts already made, or hereafter to be made,  
 "touching the transportation of felons; and if any such offender  
 "or offenders shall be found at large within Great Britain before  
 "the expiration of the said term, without lawful cause, he, she, or  
 "they shall suffer death as felons, and have execution awarded  
 "against him, her, or them, as persons attainted of felony, with-  
 "out benefit of clergy."

Not to prevent  
 any judge, jus-  
 tice, &c. from  
 apprehending  
 such offenders  
 by the ordinary  
 course of law.

† Sect. 17. By 24 Geo. 3. c. 47. s. 14. it is provided, "That  
 "nothing herein contained shall be construed to prevent or hinder  
 "any judge, justice of the peace, magistrate, officer, or minister  
 "of justice whatsoever, from taking, apprehending, and securing  
 "such offender or offenders against whom such information shall  
 "be given, and for requiring whose surrender such order in coun-  
 "cil shall be made as aforesaid, by the ordinary course of law;  
 "and in case such offender or offenders, against whom such in-  
 "formation, and for requiring whose surrender such order in coun-  
 "cil shall be made as aforesaid, shall be taken and secured, in  
 "order to be brought to justice, before the time shall be ex-  
 "pired, within which he or they shall be required to surrender  
 "him or themselves by such order in council as aforesaid; that  
 "then, and in such case, no further proceeding shall be had upon  
 "such order made in council against him or them so taken and  
 "secured as aforesaid, but he or they shall be brought to trial by  
 "due course of law; any thing herein contained to the contrary  
 "in any wise notwithstanding."

The following constructions have been held upon this statute.

Foster, 51.  
 1 Wilson, 164.  
 4 Bac. Ab. 567.  
 O. B. 1785.  
 p. 646. p. 772.

† Sect. 18. First, That it is certainly necessary to suggest the several facts and requisites in the act on the roll, in order to ground a prayer for execution; for they are the several steps which the act requireth to be taken by the crown, in order to bring the prisoner under an attainder: and he may traverse them all, and the offender will not be affected, unless the several requisites mentioned in the act have been complied with in this particular case;

and .

and if he traverseth all or any of them, the *onus probandi* lies upon the crown; for this is not like the case of an attainder by act of parliament, in which the facts are settled, the person named, and the only question is, whether the prisoner is the identical person attainted.

† *Sect. 19.* SECONDLY, That if the prisoner would take advantage of the insufficiency of the suggestion, *viz.* because the names of the market-towns at which it is enacted the offender shall be proclaimed is not set forth—he must demur. He cannot take advantage of it on motion. Foster, 56.

† *Sect. 20.* THIRDLY, That if the prisoner pleads, he must do it *instantly* and *ore tenus*, as is done in indictments; for there can be no inconvenience in his pleading *instantly*, if he intends to put the proof of all the matters suggested on the roll upon the crown. Foster, 56.

† *Sect. 21.* FOURTHLY, That the prisoner is not intitled to a copy of the suggestion. Foster, 56.

† *Sect. 22.* FIFTHLY, That the words, “near to the place,” are restrictive of the sheriff’s power, and that the proclamation must be made in the market-towns near the place, and not at remote towns, nor at towns even comparatively remote; for though it does not mean at the very next market-towns, it would be very dangerous to leave matters of this sort to the discretion of the sheriff merely. Foster, 57.

† *Sect. 23.* SIXTHLY, That the proceedings at the trial shall be in the same form and manner as before justices of gaol-delivery.

† *Sect. 24.* SEVENTHLY, That if an offender be arraigned upon a suggestion on the surrender clause, and the crown should afterwards think proper to proceed against him by indictment on the merits of the case, the attorney-general may enter a *nolle prosequi* on the record of the suggestion. Case of Geo. Cossans, Old Bailey Sessions, 1785.

As to the THIRD POINT, *viz.* In what county the offence of smuggling, &c. may be tried.

† *Sect. 25.* By 19 Geo. 2. c. 34. s. 5. “And for the better and more impartial trial of any indictment or information which shall be found, commenced, or prosecuted, for any of the offences made felony by this or any other act relating to the revenues of customs or excise,” it is enacted, “That every such offence shall and may be inquired of, examined, tried, and determined, in any county within that part of the kingdom of Great Britain called England, in such manner and form as if the fact had been therein committed: provided, that no attainder for any of the offences made felony by virtue of this act shall make or work any corruption of blood, loss of dower, or forfeiture of lands or tenements.” Offences where to be tried. Attainder not to effect corruption of blood, &c. or forfeiture.

† *Sect. 26.* By 24 Geo. 3. c. 47. s. 16. it is provided, “That in case any person shall be brought before any justice of the peace, being charged with having hindered, opposed, obstructed, or assaulted, any officer of the navy, customs, or excise, contrary to this act, and it shall appear that the offence with which such person is charged falls within the provisions of an act passed in the nineteenth year of his majesty’s reign, intituled, ‘An act for Persons charged with obstructing officers, whose offence falls within the provisions of 19 Geo. 3. c. 69. may be committed until the next quarter-sessions, &c.’” Persons charged with obstructing officers, whose offence falls within the provisions of 19 Geo. 3. c. 69. may be committed until the next quarter-sessions, &c.

“ the more effectually preventing the pernicious practices of smuggling in this kingdom; and for indemnifying persons who have been guilty of offences against the laws of the customs and excise, upon the terms therein mentioned;’ it shall and may be lawful for such justice, if he thinks fit, instead of proceeding against such offender according to the provisions of this act, to commit such offender to the county gaol until the next quarter-sessions of the peace; and in that case every such offender shall be tried and punished as by the said last recited act is directed, and not otherwise.”

Offences committed in England and Wales.

† Sect. 27. By 24 Geo. 3. c. 47. s. 17. “ And for the speedy and impartial trial of any offence, which by this act is declared to be a felony or misdemeanor,” it is enacted, “ That every such offence, in case the same shall be committed within England, Wales, or the town of Berwick upon Tweed, or within the limits of any of the ports thereof, or within four leagues of any part of the coasts thereof, shall and may be inquired of, examined, tried, and determined, before any court or courts of oyer and terminer, great session, or gaol delivery, in any county within that part of Great Britain called England, or the dominion of Wales, in such manner as if the fact had been actually committed within such county; any law, usage, or custom, to the contrary in any wise notwithstanding.”

Offences committed in Scotland.

† Sect. 28. By 24 Geo. 3. c. 47. s. 18. it is enacted, “ That in case any offence, which by this act is declared to be a felony or misdemeanor, shall happen to be committed in that part of Great Britain called Scotland, or within the limits of any port thereof, or within four leagues of the coasts of the same, information of such offence may be given to any justice of the peace, judge ordinary, or judge admiral, depute or substitute, residing nearest the place where such offence may have been committed; who, if he shall see cause, may and shall grant a warrant for committing the person or persons complained of to the common gaol of the county, city, borough, or place, there to lie, until he is liberated in due course of law; and such person or persons shall and may be tried before the court of judicary or circuit courts, or before the judge of the high court of admiralty at Edinburgh; or in case the offence be only such as is punishable by hard labour or imprisonment, the same may be tried before the judge ordinary of the county or place where the warrant was granted.”

Persons taken before a justice for a misdemeanor not to be admitted to bail, without recognizance for appearance, &c.

† Sect. 29. By 24 Geo. 3. c. 47. s. 19. it is further enacted, “ That where any person or persons shall, by virtue of this present act, be arrested and taken before any one of his majesty’s justices of the peace, for any offence against this act deemed a misdemeanor, such person or persons shall in no case be admitted to bail, unless he shall first enter into a recognizance, with two sufficient sureties, to his majesty, his heirs and successors, in the sum of two hundred pounds, and the said sureties in one hundred pounds each, with condition that such person or persons shall appear at the then next ensuing court of oyer and terminer, or general gaol delivery, or great sessions, to be holden for such county for which the justice before whom he shall be brought

“brought shall act, and answer and plead to any indictment which  
 “may be found at or before such court for such misdemeanor;  
 “and such recognizance shall forthwith be transmitted to the clerk  
 “of assize, or other proper officer of the court of oyer and ter-  
 “miner, general gaol delivery, or great sessions, for such county  
 “as aforesaid.”

† *Sect. 30.* By 24 Geo. 3. c. 47. s. 20. it is further enacted, Persons accused  
in Scotland, &c.  
 “That where any such misdemeanor is committed in Scotland, or  
 “within the limits of any port thereof, or within four leagues of  
 “the coasts of the same, the person or persons accused thereof,  
 “and taken before any justice of the peace, or other judge compe-  
 “tent in Scotland, shall not be admitted to bail, unless he enter  
 “into a recognizance, with two sufficient sureties, to his majesty,  
 “his heirs and successors, in the sum of two hundred pounds, and  
 “the said sureties in one hundred pounds each, with condition that  
 “he shall stand trial, in the way and manner directed by this act,  
 “and according to the forms practised in that part of the king-  
 “dom.” (1)

## 2. *Granting fraudulent Permits.*

† *Sect. 1.* By 23 Geo. 3. c. 70. s. 8. it is recited, “That  
 whereas, for the better securing the duties chargeable upon ex-  
 ciseable commodities, the dealers therein are, by several statutes  
 now in force, required to take out permits from the proper officers  
 of excise, certifying that those duties have been paid, which per-  
 mits are to accompany such commodities when removing from  
 one part of this kingdom to any other part thereof: and whereas  
 great frauds have been committed by forging permits in imitation  
 of those granted by such officers, and the penalties already pro-  
 vided to prevent such forgeries are not sufficient to suppress so  
 great an evil: for the more effectual preventing such practices, so  
 manifestly tending to the ruin of the fair trader, and to the dimi-  
 nution of so material a branch of the revenue of this kingdom,” it  
 is enacted, “That the respective commissioners of excise in Eng-  
 “land and Scotland shall provide, or cause to be provided, moulds  
 “or frames for the making of paper to be used for permits, which  
 “paper shall have the words ‘excise office’ visible in the sub-  
 “stance of such paper; and shall also provide, or cause to be pro-  
 “vided, one or more plate or plates, engraved with certain marks,  
 “stamps, and devices, in manner as to them shall seem meet, (which  
 “marks, stamps, and devices on the said plates, or any of them,  
 “may from time to time be varied or altered in such manner, and  
 “as often as the said commissioners for the time being respectively  
 “shall think necessary,) for the printing, stamping, and marking  
 “the said paper; and all permits from thenceforth to be given or  
 “granted, by the respective officers for the several duties of excise  
 “and inland duties, for the removal of any exciseable commodity,  
 “shall be printed, stamped, and marked by the said plate or plates  
 “on paper so made, with the words ‘excise office’ visible in the  
 “substance thereof; which said paper shall be made, and the said  
 “plate or plates shall be engraven, by such person and persons  
 “respectively as are now, or hereafter shall be, appointed by the  
 “said commissioners of excise or the major part of them, from  
 “time

Commissioners  
to provide  
moulds for ma-  
king of paper  
to be used for  
permits, &c.

(1) See also, 52 Geo. 3. s. 11. *ante*, p. 670.

time to time, under their respective hands and seals, for those purposes; and as well the said paper so made, as also the said plate or plates so engraved as aforesaid, shall be kept by such officer or officers as shall from time to time be appointed by the said commissioners, or the major part of them respectively, for keeping the same: and the officer or officers to be appointed for printing permits shall not print, stamp, or mark any paper whereon any permit or permits shall be given or granted for the removal of any exciseable commodity, but on the paper so provided as aforesaid, and having the words 'excise office' visible in the substance of such paper."

All persons who shall make any mould, &c. for making such paper as aforesaid,

or assist in making such paper, &c.

unless appointed by the commissioners of excise,

shall suffer death as felons.

Persons counterfeiting permits, &c.

† *Sect. 2.* By 23 Geo. 3. c. 70. s. 9. it is further enacted, "That if any person or persons whatsoever (not being authorized by the respective commissioners of excise in England and Scotland so to do) shall make, or cause or procure to be made, or shall knowingly aid or assist in the making, or without being authorized or appointed as aforesaid, shall knowingly have in his, her, or their custody or possession, without lawful excuse, (the proof whereof shall lie on the person accused,) any frame, mould, or instrument, for the making of paper, with the words 'excise office' visible in the substance of such paper; or shall make, or cause or procure to be made, or knowingly aid or assist in the making any paper in the substance of which the words 'excise office' shall be visible; or if any person (except as before excepted) shall, by any art, mystery, or contrivance, cause or procure the said words 'excise office,' to appear visible in the substance of any paper whatever; or if any person or persons whatever (not being appointed as aforesaid) shall engrave, cast, cut, or make, or shall cause or procure to be engraven, cast, cut, or made, any plate or plates, or other thing, with any mark, stamp, or device thereon, in imitation of or to resemble any mark, stamp, or device made and used by the direction of the said commissioners of excise, or the major part of them respectively, in manner as aforesaid, for the purpose of printing, stamping, and marking of the paper to be used for a permit or permits, to accompany any exciseable commodity or commodities removing or removed from one part of this kingdom to any other part thereof, in pursuance of the directions of the several statutes requiring such permit; every person so offending in any of the cases aforesaid, and being thereof lawfully convicted, shall, for such offence, be deemed and adjudged a felon, and shall suffer death, as in cases of felony, without benefit of clergy." (1)

† *Sect. 3.* By 23 Geo. 3. c. 70. s. 10. it is further enacted, "That if any person or persons whatsoever shall counterfeit or forge, or cause to be counterfeited or forged, any permit for the removal of any exciseable commodity from one part of this kingdom to any other part thereof, for the removal of which a permit or certificate is by any act or acts of parliament now in force required; or if any person or persons shall knowingly

" or

(1) This clause is in substance re-enacted by stat. 52 Geo. 3. c. 143. s. 9.

“ or willingly give any false or untrue permit, or shall knowingly or willingly accept or receive any false or untrue permit with any such exciseable commodity to be removed or removed as aforesaid; or if any person or persons shall fraudulently alter or erase any permit, after the same shall have been given or granted by the proper officer of excise; or if any person or persons shall knowingly or willingly publish or make use of any such permit so counterfeited, forged, false, untrue, altered, or erased; every person so offending shall, (in lieu of any former penalty,) for each and every such offence, forfeit, and lose the sum of five hundred pounds; which forfeiture shall and may be prosecuted in any of his majesty’s courts of record at Westminster, or in the court of exchequer in Scotland.”

shall forfeit  
£500.

† Sect. 4. By 23 Geo. 3. c. 70. s. 11. it is further enacted, That if any officer of excise, or other inland duties, shall deliver out, or suffer to be delivered out, any paper having the words ‘ excise office ’ visible in the substance thereof, either before or after the stamp or mark, so to be provided as aforesaid, shall be printed thereon, or before the same shall be filled up, agreeable to the request-note brought from any trader, for the purpose of having a permit for the removal of some exciseable commodity; or if any such officer shall knowingly give or grant any false or untrue permit, or shall make any false or untrue entry in the counterpart or counterparts of any permit or permits, by him given or granted for the removal of any exciseable commodity from the stock of any dealer therein; or shall knowingly and willingly receive or take any exciseable commodity whatsoever into the stock of any such dealer, brought in with any false, forged, or untrue permit, or shall knowingly permit or suffer the same to be done, directly or indirectly, contrary to the true intent and meaning of the several statutes in such case made and provided, every such officer so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be transported, in like manner as other felons are directed to be transported by the laws and statutes of this realm, for any time not exceeding seven years.”

Penalty on excise officers delivering out paper for permits improperly,

or granting false permits, &c.

### 3. *Transposing Plate Stamps.*

By 52 Geo. 3. c. 143. s. 8. it is declared and enacted, “ That if any person shall, after the passing of this act, transpose or remove, or cause or procure to be transposed or removed, from one piece of wrought plate of gold or silver to another, or to any vessel or ware of base metal, any impression made with any mark, stamp, or die, provided, made, or used by or under the direction of the said commissioners of stamps, or by or under the direction of any other person or persons legally authorized in that behalf, for denoting any duty or duties, or the payment of any duty or duties, granted to his majesty on gold or silver plate; or shall stamp or mark, or cause or procure to be stamped or marked, any vessel or ware of base metal with any mark, stamp, or die, which shall have been forged, or counterfeited in imitation of or to resemble any mark, stamp, or die, so provided, made, or used as aforesaid; or shall sell, exchange, or expose

“ to



“ to sale, or export out of Great Britain, any wrought plate of  
 “ gold or silver, or any vessel or ware of base metal, having there-  
 “ upon the impression of any forged or counterfeited mark, stamp,  
 “ or die, for denoting any such duty or duties, or the payment of  
 “ any such duty or duties, or any forged or counterfeited impres-  
 “ sion of any mark, stamp, or die, so provided, made, or used as  
 “ aforesaid, or any impression of any such mark, stamp, or die,  
 “ which shall have been transposed or removed from any other  
 “ piece of plate as aforesaid, knowing the same respectively to be  
 “ forged or counterfeited, or transposed or removed as aforesaid;  
 “ or shall wilfully and without lawful excuse (the proof whereof  
 “ shall lie on the person accused) have or be possessed of any such  
 “ forged or counterfeited mark, stamp, or die, for denoting any such  
 “ duty or duties, or the payment thereof; every person so offend-  
 “ ing, and being thereof convicted, shall be adjudged guilty of felo-  
 “ ny, and shall suffer death as a felon, without benefit of clergy.”

#### 4. *Perjuries relative to the Revenue of Excise.*

By 46 Geo. 3. c. 112. it is recited, “ That by several acts re-  
 lative to his majesty’s duties of excise, oaths are required to be  
 taken in manner therein mentioned; and it is expedient to make  
 such provisions as is hereinafter mentioned, for the punishment  
 of persons wilfully taking a false oath, in any of the cases in which  
 an oath is by any such act directed or required to be taken;” it  
 then enacts, “ That from and after the passing of this act, any  
 “ person or persons who shall be convicted of wilfully taking a  
 “ false oath, in any of the cases in which an oath is by any act or  
 “ acts of parliament relating to the duties of excise directed or  
 “ required to be taken, shall be liable to the pains or penalties  
 “ to which persons are liable for wilful and corrupt perjury.”

#### 5. *Embezzlement of Public Money by Collectors, &c.*

The statute 50 Geo. 3. c. 59. intituled, “ An act for more  
 effectually preventing embezzlement of money or securities for  
 money belonging to the public, by any collector, receiver, or other  
 person entrusted with the receipt, care or management thereof;”  
 recites, that “ It is most expedient that due provision should be  
 made more effectually to prevent the embezzlement of money or  
 securities for money belonging to the public, by any collector,  
 receiver, or other officer entrusted with the receipt, custody or  
 management thereof;” and then enacts, “ That if any person or  
 “ persons to whom any money or securities for money shall be  
 “ issued for public services, shall, from and after the passing of  
 “ this act, embezzle such money, or in any manner fraudulently  
 “ apply the same to his own use or benefit, or for any purpose  
 “ whatever, except for public services, every such person so offend-  
 “ ing, and being thereof duly convicted according to law, in any  
 “ part of the United Kingdom, shall be adjudged guilty of a mis-  
 “ demeanor, and shall be sentenced to be transported beyond the  
 “ sea, or to receive such other punishment as may by law be in-  
 “ flicted on persons guilty of misdemeanors, and as the court before  
 “ which such offenders may be tried and convicted shall adjudge.”

“ If any such officer, collector, or receiver so entrusted with the  
 “ receipt, custody, or management of any part of the public reve-  
 “ nues,



“ nues, shall knowingly furnish false statements or returns of the  
 “ sums of money collected by him, or entrusted to his care, or of  
 “ the balances of money in his hands, or under his controul, such  
 “ officer, collector, or receiver so offending, and being thereof con-  
 “ victed, shall be adjudged guilty of a misdemeanor, and shall be  
 “ adjudged to suffer the punishment of fine and imprisonment, at  
 “ the discretion of the court, and be rendered for ever incapable  
 “ of holding or enjoying any office under the crown.”—*Sect. 2.*

## CHAP. XXXI.

### OFFENCES AGAINST THE PUBLIC HEALTH.

OFFENCES against the public health may be committed,

1. By selling unwholesome provisions, unfit for the food of man.
2. By spreading the infection of the plague.
3. By neglect or disobedience of the quarantine laws, which are intended to prevent the introduction of disease from foreign and infected parts.

#### 1. *Selling unwholesome Provisions.*

This is clearly an indictable offence at common law, (a) and with a view to secure the public health from suffering by adulterated food, a variety of statutes have at different periods been passed; for many of which see a former division—Respecting the Regulation of Provisions, under the head of “ Monopoly.” (1)

(a) E. P. C.  
 Vol. II. 821.  
 4 B. Com. c. 13.

#### 2. *Spreading the Plague.*

† *Sect. 1.* By 1 Jac. 1. c. 31. s. 7. it is enacted, “ That if any  
 “ person or persons infected with the plague, or being or dwelling  
 “ in any house infected, shall be by the mayor, bailiffs, constable,  
 “ or other head officer of any city, borough, town corporate, pri-  
 “ viledged place or market town, or by any justice of peace, con-  
 “ stable, headborough, or other officer of the county, (if any such  
 “ infection be out of any city, borough, town corporate, privileged  
 “ place, or market town,) commanded or appointed as aforesaid,  
 “ to keep his or their house, for avoiding of further infection, and  
 “ shall notwithstanding wilfully and contemptuously disobey such  
 “ direction and appointment, offering and attempting to break  
 “ out and go abroad, and to resist, or going abroad and resisting  
 “ such keepers or watchmen as shall be appointed, as aforesaid,  
 “ to see them kept in; that then it shall be lawful for such watch-  
 “ men with violence to enforce them to keep their houses; and if  
 “ any hurt come by such enforcement to such disobedient per-  
 “ sons, that then the said keepers, watchmen, and any other their  
 “ assistants,

An infected per-  
 son commanded  
 to keep his  
 house, disobey-  
 eth.

(1) See the case of *R. v. Treve*, ante, p. 322.

39 Eliz.c. 4.

“ assistants, shall not be impeached therefore: and if any infected person, as aforesaid, so commanded to keep house, shall, contrary to such commandment, wilfully and contemptuously go abroad, and shall converse in company, having any infectious sore upon him uncured, that then such person and persons shall be taken, deemed, and adjudged as a felon, and to suffer pains of death, as in case of felony: but if such person shall not have any such sore found about him, then for his said offence to be punished as a vagabond in all respects should or ought to be, by the statute made in the nine-and-thirtieth year of the reign of our late sovereign lady *Queen Elizabeth*, for the punishment of rogues and vagabonds; and further, to be bound to his or their good behaviour for one whole year.” (2)

### 3. Quarantine.

The statutes of 45 Geo. 3. c. 10. and 46 Geo. 3. c. 98. regulate the performance of quarantine in cases of ships and persons coming from infected places. The stat. 45 Geo. 3. c. 10. directs what ships shall be liable to perform quarantine; and sect. 10. enacts, “ That all ships, &c. coming from, or having touched at, any place from whence his majesty, his heirs, &c. shall have adjudged and declared it probable that the plague, or any other infectious disease, highly injurious to the health of his majesty’s subjects, may be brought; and all vessels receiving persons or goods from such vessels are to perform quarantine.” And by order in council, certain goods also which are supposed to have the property of retaining infection may be made subject to quarantine; and in order to greater precaution, certain officers are authorized to go off to any ship approaching, and to examine the captain as to the state of the health of those on board, &c.; and the master giving false answers to such interrogatories is to pay a penalty of £200.

By sect. 19. “ In case it shall appear, upon such examination or otherwise, that such ship or vessel is under such circumstances as shall render it liable to perform quarantine, and that the port or place where it so arrives, or at which it attempts to enter, as aforesaid, is not the port or place where it ought so to perform quarantine, in such case it shall and may be lawful to and for the officers of any of his majesty’s ships of war, or of any of his majesty’s forts or garrison, and all other his majesty’s officers, upon notice thereof given to them, or any of them respectively, and to and for any other person or persons whom they shall call to their aid and assistance, and such officers and other persons are hereby required to oblige such ship or vessel to go and repair to such place as hath been or shall be appointed for performance of quarantine, and to use all necessary means for that purpose, either by firing of guns upon such ship or vessel, or by any other kind of necessary force whatsoever; and in case any  
“ such

(2) This offence, by the blessing of Providence, has been incapable of being committed in this country now for a century and a half. The last appearance of the plague in this country, at least to attract general observation, was the great plague previous to the fire of London, in the reign of

Charles the Second. The history of that plague, written by De Foe, is a most interesting work. For although the narrative is a fiction, yet it is a fiction embodying the real facts of the time, and conveying the state and feelings of London during the continuance of that severe visitation of Providence.

“such ship or vessel shall come from, or shall have touched at, any place infected by the plague, or other such infectious disease or distemper, as aforesaid, or shall have any person on board actually infected with the plague, or such other infectious disease or distemper as aforesaid; and the commander, master, or other person having charge of such ship or vessel, knowing that the place from whence he came, or at which he had touched, as aforesaid, was infected with the plague, or such other infectious disease or distemper, or knowing some person on board to be actually infected with the plague, or such other infectious disease or distemper, as aforesaid, shall refuse or omit to disclose the same upon such examination, as aforesaid, or shall wilfully omit to hoist the signal hereinbefore directed, to denote that his ship or vessel is liable to the performance of quarantine, at the times and on the occasions hereinbefore directed with respect to the same, such commander, master, or other person having the charge of such ship or vessel, shall be adjudged guilty of felony, without benefit of clergy.”

Stat. 46 Geo. 3. c. 98. s. 1. directs, “That every commander, &c. of any ship, &c. having the plague or other infectious distemper aboard, whenever he meets another ship at sea, or shall be within four leagues of the coast of Great Britain, Jersey, Guernsey, Alderney, or Sark, shall hoist a certain specified signal, and keep the same hoisted while the other ship remains in sight, or he is within the limited distance of the coast, until he arrives at the port where he is to perform quarantine; on failure whereof every such master, &c. shall forfeit and pay for every such offence the sum of £200.”

By the former act of 45 Geo. 3. c. 10. the neglect to hoist the signal is felony without benefit of clergy; it should seem that that part of the act is repealed by the clause above stated in the present act of 46 Geo. 3. c. 98.

By stat. 45 Geo. 3. c. 10. s. 21. Every commander or other person quitting a ship liable to perform quarantine, on board which the plague, &c. shall not have appeared, before quarantine duly performed, unless by license, as directed by the act, or not causing the ship to be conveyed in due time to where she is appointed to perform the quarantine, is to forfeit £500.

“And if any person coming in any ship or vessel liable to perform quarantine (or any pilot or other person going on board the same, either before or after the arrival of such ship or vessel at any port or place in Great Britain, or the islands aforesaid) shall, either before or after such arrival, quit such ship or vessel, by going on shore in any port or place in Great Britain, or the islands aforesaid, or by going on board any other ship, vessel, or boat, with intent to go on shore, as aforesaid, before such ship or vessel so liable to quarantine, as aforesaid, shall be regularly discharged from the performance thereof; it shall and may be lawful for all persons whatsoever, by any kind of necessary force, to compel such pilot or other person so quitting such ship or vessel liable to quarantine, as aforesaid, to return on board the same; and every such pilot or other person so quitting such ship or vessel,

vessel, so liable to quarantine, shall for every such offence suffer imprisonment for the space of six months, and shall forfeit and pay the sum of £200."

By sect. 23. reciting, "That refractory behaviour in persons liable to perform quarantine may be attended with great danger to his majesty's subjects, it is enacted, "That all persons liable "to perform quarantine, and all persons having had communica-  
"tion or intercourse with them, whether in ships or a lazaret, shall  
"be subject to the orders of the superintendant of quarantine, or  
"his assistant, or to other officers therein named, who are to com-  
"pel all persons and goods liable to perform quarantine; and if  
"any person or persons liable to perform quarantine, as aforesaid,  
"or any person or persons having had any intercourse or commu-  
"nication with him, her, or them, shall wilfully refuse or neglect  
"to repair forthwith, when required and directed so to do by such  
"officer as aforesaid, to the said lazaret, ship, vessel, or place  
"duly appointed in that behalf, or having been placed in the said  
"lazaret, ship, vessel, or place, shall escape, or attempt to escape,  
"on't of the same before quarantine duly performed, it shall and  
"may be lawful to and for the said quarantine officers, and also  
"the watchmen, and other persons appointed to see quarantine  
"performed, and each of them, and they are hereby respectively  
"required, by such necessary force as the case shall require, to  
"compel every such person refusing and neglecting, as aforesaid,  
"and every such person so escaping, or attempting to escape, as  
"aforesaid, to repair or return to such lazaret, ship, vessel, or  
"place, and also every person actually escaping as aforesaid, shall  
"be adjudged guilty of felony, and suffer death as in cases of  
"felony, without benefit of clergy."

By sect. 30. "If any person shall knowingly and wilfully forge  
"or counterfeit, or procure to be forged or counterfeited, any cer-  
"tificate directed and required to be granted by this act, or shall  
"publish as true any such forged or counterfeited certificate,  
"knowing the same to be forged or counterfeited, he or she shall  
"be adjudged guilty of felony, and shall suffer death as in cases  
"of felony, without benefit of clergy."

The fifth section of stat. 46 Geo. 3. c. 98. repeals so much of  
the stat. 45 Geo. 3. c. 10. as relates to the certificate and proof  
of opening and airing such goods, &c. as are liable to quarantine,  
and establishes new regulations with respect thereto, and the  
giving certificates in relation thereof; and then, by sect. 8. enacts,  
"That if any person shall knowingly and wilfully forge or coun-  
"terfeit, interline, erase or alter, or procure to be forged or coun-  
"terfeited, interlined, erased, or altered, any certificate directed  
"or required to be granted by any order of his majesty, his heirs,  
"&c. in council, now in force, or hereafter to be made, touching  
"quarantine and the prevention of infection, or shall publish as  
"true any such forged or counterfeited, interlined, erased, or  
"altered certificate, knowing the same to be forged, &c. or shall  
"knowingly and wilfully utter and publish any such certificate  
"with intent to obtain the effect of a true certificate to be given  
"thereto, knowing the contents of such certificate to be false, he  
"or

“or she shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.”

By 45 Geo. 3. c. 1. s. 31. it is enacted, “If any person shall land or unship, or shall move in order to the landing or unshipping thereof, any goods, wares, or merchandize, packets, packages, baggage, wearing apparel, books, letters, or any other articles whatever, from on board any ship or vessel liable to perform quarantine as aforesaid, or shall knowingly receive the same after they have been so landed or unshipped, every such person shall forfeit and pay a sum not exceeding the sum of 500*l*.; and if any person or persons shall clandestinely carry, or shall secrete or conceal for the purpose of carrying, any letters, goods, wares, or merchandize, or other articles as aforesaid, from any ship or vessel actually performing quarantine, or from the lazaret or other place where such goods, wares, merchandize, or other articles as aforesaid, shall be performing quarantine, every such person so offending as last aforesaid shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.”

By sect. 37. All persons making false answers on oath to interrogatories required by the act, or procuring other persons to do so, shall be deemed to be guilty of and shall be liable to be prosecuted for wilful and corrupt perjury, or subornation of wilful and corrupt perjury, as the case may be, and shall suffer the pains, penalties, and punishments of the law, in such case respectively made and provided.

By sect. 39. No attainder by virtue of this act is to work corruption of blood or forfeiture.

By sect. 42. All offences against this act, whether committed on land or at sea, may be tried in any county within England or Scotland, or in the proper courts of the Islands of Guernsey, Jersey, Alderney, Sark or Man, respectively.

## CHAP. XXXII.

### OFFENCES AGAINST THE PUBLIC ECONOMY.

1. BIGAMY.
2. Clandestine and irregular Marriages.
3. Vagrancy
4. Nuisances.
5. Gaming.

#### 1. Bigamy.

By 1 Jac. 1. c. 11. it is recited, “That divers evil disposed persons, being married, run out of one county into another, or into places Felony to marry a second husband or wife,

the former being living.

1 Ed. 6. c. 12.

s. 16.

3 Inst. 88.

Cro. Eliz. 94.

Cro. Car. 461.

March, 101.

Kely. 79. 80.

1 Hale's P. C. 692.

places where they are not known, and there become to be married, having another husband or wife living, to the great dishonour of God, and utter undoing of divers honest men's children, and others;" and enacted, "That if any person or persons within his majesty's dominions of England and Wales, being married, or which hereafter shall marry, do marry any person or persons, the former husband or wife being alive; that then every such offence shall be felony, and the person and persons so offending shall suffer death as in cases of felony; and the party and parties so offending shall receive such and the like proceeding, trial, and execution, in such county where such person or persons shall be apprehended, as if the offence had been committed in such county where such person or persons shall be taken or apprehended."

To what persons this statute shall not extend.

*Sect. 2.* By 1 Jac. 1. c. 11. s. 2. it is provided, "That this act, nor any thing therein contained, shall extend to any person or persons whose husband or wife shall be continually remaining beyond the seas by the space of seven years together, or whose husband or wife shall absent him or herself the one from the other by the space of seven years together, in any parts within his majesty's dominions, the one of them not knowing the other to be living within that time."

*Sect. 3.* By 1 Jac. 1. c. 11. s. 3. it is also provided, "That this act, nor any thing herein contained, shall extend to any person or persons that are or shall be at the time of such marriage divorced by any sentence had or hereafter to be had in the ecclesiastical court; or to any person or persons where the former marriage hath been or hereafter shall be, by sentence in the ecclesiastical court, declared to be void and of no effect; nor to any person or persons for or by reason of any former marriage had or made, or hereafter to be had or made, within age of consent."

No corruption of blood, loss of dower, or inheritance.

*Sect. 4.* By 1 Jac. 1. c. 11. s. 4. it is also provided, "That no attainder for this offence, made felony by this act, shall make or work any corruption of blood, loss of dower, or disinherison of heir or heirs."

In the construction of this statute it has been holden:

1 Hale, 692.

3 Inst. 89.

Kely. 27.

C. Car. 461, 462.

*Sect. 5.* FIRST, That not only those who are divorced *à vinculo matrimonii*, but also those who are divorced only *à mensâ et thoro causâ adulterii* or *sevitæ* are within the exception in this statute, notwithstanding there be not the word "*divortiamus*," but only the word "*separamus*," in the sentence: because the statute, being penal, shall be construed favourably, and such separations are taken for divorces in common understanding.

3 Inst. 89.

1 R. Abr. 340,

141.

Co. Lit. 79.

*Sect. 6.* SECONDLY, Where either of the parties were within the age of consent at the time of the first marriage, that not only such person as was within such age, but also the other who was above it, is within the exception of the statute, because the power of disagreeing to such marriage is equal on both sides.

1 Hale, 692.

1 Sid. 171.

Kely. 80.

*Sect. 7.* THIRDLY, That if the first marriage were beyond sea, and

and the latter in England, the party may be indicted for it here, because it is the latter marriage that makes the offence; but if the first marriage were in England, and the latter beyond sea, it is said that the offender cannot be indicted here; *sed quare*, why not? Because the apprehension to be legal must be founded on a previous offence, but the party has committed no offence against the law of England by a marriage in a foreign country; for the words of the statute are, "That the parties so offending shall receive such and the like proceeding, trial, and execution, in such county where such person or persons shall be apprehended, as if the offence had been committed in such county where such person or persons shall be taken or apprehended."

† Sect. 8. FOURTHLY, That the first and true wife cannot be admitted to give evidence against her husband; and this rule has been so strictly taken, that even an affidavit to postpone the trial, made by the first wife, has been rejected; but it is agreed, that the second woman is a competent witness, even to prove the marriage, for she is not his wife so much as *de facto*.

1 Hale, 692.

O. B. Feb.  
Sess. 1786.  
1 Hale, 693.

† Sect. 9. FIFTHLY, That on the trial of this offence, a marriage in fact must be proved, for that neither acknowledgment, nor cohabitation, nor reputation, nor the production of articles between the parties for settling the estate between them as man and wife, nor even the confession of the parties, are sufficient to maintain an indictment on this statute.

Morris v. Mil-  
ler,  
4 Burr. 2059.

† Sect. 10. SIXTHLY, That the evidence necessary to prove a marriage in fact is the production of the register, pursuant to the statute 26 Geo. 2. c. 33. s. 14. or, if that be lost or cannot be had, by the *viva voce* testimony of some person who was present at the celebration of the marriage. (1)

Morris, v. Mil-  
ler,  
4 Burr. 2059.

† Sect. 11. SEVENTHLY, That a sentence obtained in the spiritual court, in a suit of jactitation, does not preclude the prosecutor from proving a marriage between the same parties on an indictment for bigamy; for if even such a sentence were *prima facie* evidence, it might be avoided by shewing that it was obtained by fraud.

Duchess of  
Kingston's Case,  
11 St. Tr. 262.

## 2. Clandestine and Irregular Marriages.

Marriage, as the most important of all civil contracts, has in christian

(1) This ruling seems however to be shaken by a subsequent case of *R. v. Truman*, who was tried at the Nottingham Spring Assizes, 1793. The prisoner was indicted for that he having married Mary Russel, spinster, at Ragan, in Scotland, afterwards married Jane Cass, his former wife being still living. A witness proved that the prisoner had cohabited with Mary Russel as his wife, and had often acknowledged to the witness that he had married her in Scotland, and to back his assertion he once shewed witness a paper, (which the prisoner not having produced pursuant to notice given him for that purpose) a copy of it was proved. It purported to be a proceeding before a court in Scotland, by which the prisoner was tried for having contracted marriage with Mary Russel in an un-

orderly manner against the rules of the Kirk. Upon a question reserved for the judges whether this was sufficient evidence of the first marriage, they held that it was; for it did not rest upon the bare acknowledgment of the prisoner, but the defendant had backed his assertion by producing a proceeding in court which verified it. One of the judges observed, there was a distinction in the acknowledgment of a marriage between this case and in an action for criminal conversation. In the latter case the acknowledgment of the plaintiff that he was married was no evidence against the defendant. And the acknowledgment of the defendant that the plaintiff was married was an acknowledgment of a fact not within his own knowledge.



## OFFENCES AGAINST PUBLIC ECONOMY. Bk. 1.

christian countries always been accompanied by the solemnities of religion, and, except by special dispensation from ecclesiastical authority, authenticated, by the ceremony being performed in *facie ecclesiæ*. But certain irregularities having grown up occasioned the statute of 26 Geo. 2. c. 33. which, after reciting that many persons did solemnize marriage in prisons and other places without publication of bans or license of marriage first had and obtained, enacted certain regulations upon these subjects, and made it a felony subject to fourteen years transportation for any one to solemnize marriage in any other place than a church or public chapel. This act continued in force until the 3 Geo. 4. c. 75. which repealed many of the provisions, and enacted other regulations in lieu thereof; this latter act was also repealed, together with the 26 Geo. 2. the next session, by stat. 4 Geo. 4. c. 17. and another act passed at the same session of parliament, enacting other regulations—repealing 26 Geo. 2. and 4 Geo. 4. c. 17.—and this last statute, viz. the 4 Geo. 4. c. 76. which directs certain regulations to be observed in the celebration of marriages, by sect. 21, enacts, “That if any person shall, from and after the 1st day of November, (1823), solemnize matrimony in any other place than in a church or such public chapel wherein bans may be lawfully published, or at any other time than the hours of eight and twelve in the forenoon, unless by special license from the Archbishop of Canterbury, or shall solemnize marriage without due publication of bans, unless license of marriage be first had and obtained from some person or persons having authority to grant the same; or if any person falsely pretending to be in holy orders shall solemnize matrimony according to the rites of the Church of England; every person knowingly and wilfully so offending, and being lawfully convicted thereof, shall be deemed and adjudged to be guilty of felony, and shall be transported for the space of fourteen years, according to the laws in force for the transportation of felons; provided that all prosecutions for such felony shall be commenced within the space of three years after the offence committed.”

Persons celebrating marriage in an irregular way to be transported for fourteen years.

By sect. 28. in order to preserve evidence of the marriage, an entry is directed to be made in the registry book of the parish; and by sect. 29. it is enacted, “That if any person shall, after the said 1st day of November, with intent to elude the force of this act, knowingly and wilfully insert or cause to be inserted in the registry book of such parish or chapelry as aforesaid, any false entry of any matter or thing relating to any marriage; or falsely make, alter, forge or counterfeit, or cause or procure to be made, altered, forged, or counterfeited, or assist in falsely making, altering, forging or counterfeiting any such entry in such register; or falsely make, alter, forge, or counterfeit, or cause or procure to be made, &c. or assist in falsely making, &c. any such license of marriage as aforesaid, or alter or publish as true any such false, altered, forged, or counterfeited register as aforesaid in a copy thereof, or any such false, altered, forged, or counterfeited license of marriage, knowing such register or license of marriage respectively to be false, altered, forged or counterfeited; or if any person shall, “from

Persons forging or altering marriage register or license, guilty of felony, and to be transported for life.

“ from and after the said 1st day of November, wilfully destroy, “ or cause or procure to be destroyed, any register book of marriages, or any part of such register book, with intent to avoid “ any marriage, or to subject any person to any of the penalties “ of this act; every person so offending and being thereof law- “ fully convicted, shall be deemed and adjudged guilty of felony, “ and shall suffer the punishment of transportation for life, ac- “ cording to the laws in force for the transportation of felons.”

By a preceding statute, 52 Geo. 3. c. 146. the false entry of any matter relating to any marriage, or to forge or alter any such register, &c. is made a felony, subject to *fourteen* years transportation. (Vide *ante*, p. 290.)

### 3. *Vagrancy.*

The statute of 5 Geo. 4. c. 83. repeals all the former laws relative to rogues and vagabonds.

The act then declares that the following shall be deemed

#### *Idle and Disorderly Persons.*

By sect. 3. it is enacted, “ That every person being able “ wholly or in part to maintain himself or herself, or his or her “ family, by work or by other means, and wilfully refusing or “ neglecting so to do, by which refusal or neglect he or she, or “ any of his or her family, whom he or she may be legally bound “ to maintain, shall have become chargeable to any parish, town- “ ship or place; every person returning to and becoming charge- “ able in any parish, township, or place, from whence he or she “ shall have been legally removed by order of two justices of the “ peace, unless he or she shall produce a certificate of the church- “ wardens and overseers of the poor of some other parish, town- “ ship, or place, thereby acknowledging him or her to be settled in “ such other parish, township, or place; every petty chapman or “ pedlar wandering abroad and trading, without being duly licensed, “ or otherwise authorized by law; every common prostitute wan- “ dering in the public streets or public highways, or in any place “ of public resort, and behaving in a riotous or indecent man- “ ner; and every person wandering abroad, or placing himself “ or herself in any public place, street, highway, court, or pas- “ sage, to beg or gather alms, or causing or procuring or encour- “ aging any child or children so to do, shall be deemed an idle “ and disorderly person within the true intent and meaning of “ this act; and it shall be lawful for any justice of the peace “ to commit such offender (being thereof convicted before him “ by his own view, or by the confession of such offender, or by “ the evidence on oath of one or more credible witness or wit- “ nesses) to the house of correction, there to be kept to hard “ labour for any time not exceeding one calendar month.”

5 Geo. 4. c. 83.  
Persons com-  
mitting certain  
offences how to  
be punished.

*Rogues and Vagabonds.*

5 Geo. 4. c. 8  
Persons com-  
mitting certain  
offences to be  
deemed rogues  
and vagabonds.

By sect. 4. it is further enacted, "That every person committing any of the offences herein-before mentioned, after having been convicted as an idle and disorderly person; every person pretending or professing to tell fortunes, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose on any of his majesty's subjects; every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself; every person wilfully exposing to view, in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition; every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public highway, or in the view thereof, or in any place of public resort, with intent to insult any female; every person wandering abroad and endeavouring by the exposure of wounds or deformities to obtain or gather alms; every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence; every person running away and leaving his wife, or his or her child or children, chargeable, or whereby she or they or any of them shall become chargeable to any parish, township, or place; every person playing or betting in any street, road, highway, or other open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance; every person having in his or her custody or possession any picklock key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling house, warehouse, coach-house, stable, or outbuilding, or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or having upon him or her any instrument, with intent to commit any felonious act; every person being found in or upon any dwelling house, warehouse, coach-house, stable, or outhouse, or in any inclosed yard, garden, or area, for any unlawful purpose; every suspected person or reputed thief, frequenting any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony; and every person apprehended as an idle and disorderly person, and violently resisting any constable or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended, shall be deemed a rogue and vagabond, within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction,

“ correction, there to be kept to hard labour for any time not exceeding three calendar months; and every such picklock key, crow, jack, bit, and other implement, and every such gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, and every such instrument as aforesaid, shall, by the conviction of the offender, become forfeited to the king’s majesty.”

### *Incorrigible Rogues.*

By sect. 5. it is further enacted, “ That every person breaking or escaping out of any place of legal confinement before the expiration of the term for which he or she shall have been committed or ordered to be confined by virtue of this act; every person committing any offence against this act which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be and duly convicted thereof; and every person apprehended as a rogue and vagabond, and violently resisting any constable or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended, shall be deemed an incorrigible rogue within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to remain until the next general or quarter-sessions of the peace; and every such offender, who shall be so committed to the house of correction, shall be there kept to hard labour during the period of his or her imprisonment.”

5 Geo. 4. c. 83.  
Who shall be deemed incorrigible rogues.

By sect. 6. it is further enacted, “ That it shall be lawful for any person whatsoever to apprehend any person who shall be found offending against this act, and forthwith to take and convey him or her before some justice of the peace, to be dealt with in such manner as is herein-before directed, or to deliver him or her to any constable or other peace officer of the place where he or she shall have been apprehended, to be so taken and conveyed as aforesaid; and in case any constable or other peace officer shall refuse or wilfully neglect to take such offender into his custody, and to take and convey him or her before some justice of the peace, or shall not use his best endeavours to apprehend and to convey before some justice of the peace any person that he shall find offending against this act, it shall be deemed a neglect of duty in such constable or other peace officer, and he shall on conviction be punished in such manner as is herein-after directed.”

Any person may apprehend offender.

Penalty on constables, &c. neglecting their duty.

As the offences comprised in this act are cognizable before justices of the peace in a summary way, the reader is referred to the act itself.

## 4. Common Nuisances

Are offences, under the degree of capital, more immediately against the subject, not amounting to an actual disturbance of the peace, which may be committed by private persons without any relation to an office.

For the better understanding whereof I shall first consider them in general, and then descend to those relating to highways and public houses, which seem to be the most remarkable general heads of this offence.

As to common nuisances in general, I shall consider,

1. What shall be said to be a common nuisance.
2. How it may be removed.
3. How it may be punished.

As to the FIRST POINT, viz. What shall be said to be a common nuisance.

2 R. Abr. 83.

*Sect. 1.* It seems, that a common nuisance may be defined to be an offence against the public, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires.

2 R. Abr. 83.  
Co. Lit. p. 56.

*Sect. 2.* But annoyances to the interest of particular persons are not punishable by a public prosecution as common nuisances, but are left to be redressed by the private actions of the parties aggrieved by them.

1 Sid. 209.  
Sayer, 169.  
(a) 2 R. Abr. 83.  
1 Burr. 259.  
6 Modern, 453.  
2 Wilson, 57.  
(b) 27 Ass. 6.  
2 R. Abr. 83.  
C. Eliz. 90.  
(c) 2 R. Abr. 83.  
1 Vent. 26.  
(d) 2 R. Abr. 83.  
(e) 1 Mod. 107.  
(f) 1 Roll. 406.  
3 Keb. 28. 234.  
C. Eliz. 214.  
C. Jac. 382.  
1 Saund. 135.  
C. Eliz. 148.  
2 Keb. 461.  
2 Leon. 183,  
184.  
Coke, 113  
1 Vent. 208.  
27 Ass. 19, 20.  
2 R. Abr. 83,  
84.

*Sect. 3.* And from hence it clearly follows, that no indictment for a nuisance can be good, which lays it to the damage of private persons only; as where it accuses a man of (a) surcharging such a common; or of (b) inclosing such a piece of ground, wherein the inhabitants of such a town have a right of common, to the nuisance of all the inhabitants of such a town; or of disturbing a (c) water-course running to the mill of J. S. *ad grave damnum J. S. et tenentium suorum*, without saying *omnium ligeorum domini regis*; or of doing a nuisance to a thing no way appearing to be of a public nature, *ad grave* (d) *damnum*, or (e) *detrimentum*, or (f) *commune nocumentum omnium ligeorum domini regis prope inhabitantium*. Yet it hath been resolved, that an indictment for not repairing a bridge, by reason whereof it was ruinous, *ita quod ligei domini regis per eam transire non possunt*, and concluding, *ad nocumentum eorundem*, is good without using the words *ad nocumentum omnium ligeorum*, &c. for by the king's liege people shall be understood all his liege people.

*Sect. 4.* Also it is said, that the law has so tender a regard for the interest of the king and of religion, that an indictment for doing a thing which plainly appears immediately to tend to the prejudice of either of them, is good, though it does not expressly complain of it as a common grievance; and upon this ground it hath been resolved, that an indictment for converting the king's money to one's own use is good, without more. And upon the same

same foundation also it hath been holden, that an indictment for breaking and digging up the wall of the church of such a town *ad nocumentum burghi ligeorum domini regis* is good.

*Sect. 5.* Also it hath been said, that an indictment of a common scold, by the words "*communis rixatrix*," which seem to be precisely necessary in every indictment of this kind, is good, though it conclude "*ad commune nocumentum diversorum*" instead of "*omnium, &c.*;" perhaps for this reason, because a common scold cannot but be a common nuisance. And upon the like ground it seems that it may probably be argued, that an indictment for laying logs in the stream of a navigable public river, "*ad nocumentum J. S.*" may be maintained, because it cannot but be a common nuisance. And if the law be so in this case, why should not also an indictment setting forth a nuisance to a way, and expressly and unexceptionably shewing it to be a highway, be good, notwithstanding it conclude "*in nocumentum diversorum ligeorum, &c.*" without saying "*omnium*;" for why should such a conclusion be more necessary in an indictment for one kind of nuisance than for any other? And perhaps the (a) authorities which seem to contradict this opinion might go upon this reason, that in the body of the indictment, it did not appear with sufficient certainty, whether the way, wherein the nuisance was alleged, were a highway, or only a private way; and therefore that it shall be intended from the conclusion of the indictment that it was a private way.

*Sect. 6.* There is no doubt but that common bawdy-houses are indictable as common nuisances. Also it hath been said, that all common stages for rope-dancers, and also all common gaming-houses, are nuisances in the eye of the law, as will be more fully shewn in the following division; not only because they are great temptations to idleness, but also because they are apt to draw together great numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood.

*Sect. 7.* Also it hath been holden, that a common playhouse may be a nuisance, if it draw together such numbers of coaches or people, &c. as prove generally inconvenient to the places adjacent. And it seems to be a proper distinction between playhouses and the nuisances mentioned in the foregoing section, that playhouses, having been originally instituted with a laudable design of recommending virtue to the imitation of the people, and exposing vice and folly, are not nuisances in their own nature, but may only become such by accident, whereas the others cannot but be nuisances.

*Sect. 8.* It hath been resolved, that neither an old nor a new (a) dovecote, whether it were erected by the lord of a manor, or one of his tenants, is a common nuisance; for if a dovecote were a common nuisance, it could never become lawful by any license or prescription whatsoever, because every nuisance is a *malum in se*; but it is certain, that a dove-house may be justified by a prescription, and that it is so far countenanced by the law, as to be (b) demandable in a *præcipe* before any land whatsoever which is not built upon, and that the owner may justify the taking

6 Mod. 11. 178.  
213. 239. 311.  
Moor, 847.  
Str. 849. 1247.  
Bar. K. B. 229.  
2 Sess. Cas. 26.  
2 Keble, 410.  
1 Keble, 161.  
12 Mod. 504.  
615.  
1 Roll. 201.  
Sayer, 167. 301.

(a) C. Eliz. 148.  
2 Keble, 461.  
2 R. Abr. 83.  
Latch, 183.

3 Inst. 205.  
Kitchen, 11.  
2 Burr. 1232.  
1 Modern, 76.  
2 Keble, 846.  
3 Keble, 464.  
5 Modern, 142.  
1 Vent. 169.  
10 Mod. 336.  
12 Mod. 542.

1 Roll. 109.  
5 Mod. 142.  
See Rushworth's  
Coll. part 2.  
vol. i. fol. 220.  
247.  
Skin. 625 to  
630.

(a) 2 R. Abr.  
138, 139. 263.  
2 Roll. 4. 30.  
C. Jac. 382.  
491.  
Moor, 238.  
1 Roll. 136. 201.  
Poph. 143.  
Con. 5 Co. 104.  
(b) F. N. B. 2.  
c.

(c) 16 E. 4. 7 b. Godb. 259.  
(d) Quare Moor, 580. 621. C. Eliz. 548.  
N. B. For the nuisance of keeping pigeons, vide 1 Jac. 1. c. 27. and 2 Geo. 3. c. 29.

1 Jon. 221.  
C. Car. 184.  
1 Bulst. 203.  
2 R. Abr. 137.  
Kit. 11. 23.  
St. 18 Ed. 2.

2 R. Abr. 139.  
Cont. 3 Mod. 133.  
Cro. Car. 510.  
Morley and Praguell, 1 Burr. 336.  
2 Keb. 500.  
Vide 1 Danv. 173, 174.  
Salk. 458. 460.  
Hutt. 136.  
Palmer, 536.  
Ventris, 26.  
2 Id. Ray. 1163.

Noy, 403.  
Keeble, 640.  
759.  
11 Modern. 3.  
Fitz. 179.  
2 R. Abr. 139.  
1 Lut. 169.

(1) Or to make great noises in the night with a speaking trumpet, to the disturbance of the neighbourhood. Str. 704. Or permitting a house near the highway to continue in a ruinous condition. Salk. 357. Or laying timber in a public river, although the soil on which it is laid belong to the party, provided it obstructs the necessary intercourse. 3 Bac. Abr. 686. Str. 1247. Or to place a floating dock in the river, although beneficial in repairing ships. Surrey Assizes, at Kingston, 1785. Or to travel with a cart on a common pack or horseway, and by plowing it up to render the use of it inconvenient. 6 Mod. 145. Or to put a ship of 300 tons into Billingsgate dock; for although it is a common dock, it is only for the reception of small vessels freighted with provisions for the London market. 2 Hawk. c. 25. s. 35. Or to ma-

taking another's (c) hawk, which he shall find at his dove-house, flying at his pigeons; (d) and from hence it seems clearly to follow, that though a tenant, who builds a dove-house without the license of the lord of the manor, may perhaps be liable to an action on the case at the suit of such lord, whose prerogative is said to be incroached upon by the erecting such a house without his license, yet he cannot be punished for it by a public prosecution.

*Sect. 9.* But perhaps it may be argued, that if this reasoning be good, it will follow from the same ground, that a gate erected in a highway will be also no nuisance; because if it were, it could not be justified by any prescription, as it is agreed that it may be. But to this it may be answered, that the erecting of such a gate is therefore a nuisance, because it interrupts the people in that free and open passage which they before enjoyed, and were lawfully entitled to; but where such a gate has continued time out of mind, it shall be intended, that it was set up at first by consent, on a composition with the owner of the land on the laying out the road, in which case the people had never any right to a freer passage than what they still enjoy.

*Sect. 10.* It hath been holden, that it is no common nuisance to make candles in a town, because the needfulness of them shall dispense with the noisomeness of the smell. But the reasonableness of this opinion seems justly to be questionable, because, whatever necessity there may be that candles be made, it cannot be pretended to be necessary to make them in a town; and surely the trade of a brewer is as necessary as that of a chandler; and yet it seems to be agreed, that a brewhouse, erected in such an inconvenient place wherein the business cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuisance; and so in the like case may a glass-house or swine-yard.

*Sect. 11.* It seems certain, that it is a common nuisance to divert part of a public navigable river, whereby the current of it is weakened, and made unable to carry vessels of the same burden as it could before. Also it hath been holden to be a common nuisance to divide a house in a town for poor people to inhabit in, by reason whereof it will be more dangerous in the time of infection of the plague. (1)

nufacture acid spirit of sulphur, vitriol, or aquafortis in the vicinity of dwelling houses. 1 Burr. 333. Vide also 13 Edw. 1. c. 24. 12 Rich. 2. c. 13. 2 W. & M. s. 2. c. 8. 30 Geo. 2. c. 22. 31 Geo. 2. c. 17. respecting nuisances in the cities of London and Westminster.

But the fears of mankind, however reasonable, will not create a nuisance; therefore it is no nuisance to erect a building for the purposes of inoculation. 3 Atkyns, 21. 726. 750. Nor to lay bricks in the river Thames in the party's own fishery. 3 Burr. 1770. Nor to violate a public law. Black. Rep. 570. Nor to stop up a prospect. 3 Salk. 247. 459. Cro. Eliz. 118. And whether coney burrows are a nuisance, see 1 Burr. 259. 6 Mod. 455. See also 11 Mod. 7 and 8.

As to the SECOND POINT, *viz.* How a nuisance may be removed.

*Sect. 12.* It seemeth to be certain, that any one may pull down or otherwise destroy a common nuisance, as a new gate, or even a new house erected in a highway, &c.; for if one whose estate is, or may be, prejudiced by a private nuisance actually erected, as a house hanging over his ground, or stopping his lights, &c. may justify the entering into another's ground, and pulling down and destroying such a nuisance, whether it were erected before or since he came to the estate, surely it cannot but follow *à fortiori*, that any one may lawfully destroy a common nuisance: and as the law is now holden, it seems, that in a plea justifying the removal of the nuisance, you need not shew that you did as little damage as might be. (*a*)

(*a*) *Quere*, vide *Cooper v. Marshal*, 2 R. Abr. 44. C. Car. 184. 1 Jon. 221. 11 Mod. 7, 8. Moor, 374. 2 R. Abr. 145. Salkeld, 459. Yelverton, 142. Ld. Raym. 264. 5 Coke, 101. 9 Coke, 54. Barrows, 2116. 1 Roll. 9, 35. B. Nis. 14. 1 Jon. 221. Salkeld, 458. 1 Burrow, 259.

*Sect. 13.* It hath been adjudged, that if a river be stopped, to the nuisance of the country, and none appear bound by prescription to clear it, those who have the piscary, and the neighbouring towns who have a common passage and easement therein, may be compelled to do it.

As to the THIRD POINT, *viz.* In what manner common nuisances may be punished.

*Sect. 14.* It is said, (*b*) that a common scold is punishable by being put into the ducking-stool: and there is no doubt but that whoever is convicted of any other nuisance may be fined and imprisoned.

*Sect. 15.* And it is said, that one convicted of a nuisance done to the king's highway, may be commanded by the judgment to remove the nuisance at his own costs; (2) and it seemeth to be reasonable, that those who are convicted of any other common nuisance should also have the like judgment. (3)

### *Eaves-Dropping.*

Eaves-droppers, or such as listen under walls and windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are a common nuisance, and presentable at the court-leet.—(*Kitch. of Courts*, 20.)

*Of*

(2) That is to say, if it be a permanent nuisance; but if the nuisance be only temporary, the court need not give judgment that it be abated (*Str.* 686.)—so in an indictment for building a wall across the highway, *not continuing it*, it is not necessary to give judgment that the nuisance be abated. (7 T. R. 467.)

(3) By stat. 1 and 2 Geo. 4. c. 41. for giving greater facility in the abatement of nuisances by

steam-engines, the court are empowered to give the prosecutor costs; and also by sect. 2, the court are empowered, by consent of the prosecutor, to make order for the alteration of the construction of the furnace, in case it appears that the grievance may be so remedied. But the act is not to extend to furnaces erected solely for the working of mines.



*Of Nuisances relating to Highways.*

And now I am particularly to consider such nuisances as relate to *highways* and *public houses*.

And for the better understanding of those which concern HIGHWAYS, I shall consider,

1. Such as relate to highways in general.
2. Such as relate to bridges in particular.

For the better understanding of nuisances relating to HIGHWAYS IN GENERAL, I shall examine the following points:

What shall be said to be a highway.

At whose charge and by whom it ought to be repaired.

What shall be said to be a nuisance to the highway.

How such nuisances are to be removed and punished.

*What shall be said to be a Highway.*

Co. Lit. 56.

*Communis strata*  
and *alia via*  
*regia* are syno-  
nimous terms.  
Str. 41.  
10 Mod. 383.  
Andrews, 143.

**Sect. 1.** It is said that there are three kinds of ways: First, a footway, which is called in Latin, *iter*: Secondly, a pack and prime-way, which is both a horse and foot-way, and called in Latin, *actus*: Thirdly, a cart-way, which contains the other two, and also a cart-way, and is called in Latin, *via* or *aditus*; and this is either common to all men, and then it is called *via regia*, or belongs to some city or town, or private person, and then it is called *communis strata*.

Palm. 389.  
6 Mod. 255.  
B. R. H. 315.

(a) C. Eliz. 63.  
(b) 1 Vent. 208.  
2 Keble, 173.  
3 Keble, 26.  
6 Mod. 255.

It seemeth that any one of the said ways, which is common to all the king's people, whether it lead directly to a market-town, or only from town to town, may properly be called a highway, and that any such cart-way may be called the king's high-way, and that a nuisance in any of the said ways is punishable by indictment in the court-leet; for indictments for (a) stopping horse-ways, and (b) footways, have often been allowed; and where others have been quashed, no other reason has been given for it, but that the way was not called a common way or highway.

(c) 27 Ass. 23.  
Fitz. 279.  
2 Com. Dig.  
397.

And in (c) books of the best authority, a river common to all men is called a highway.

(d) Co. Lit. 56.  
5 Edw. 4. 2.  
(e) 3 & 4 W. &  
Mary, 12.  
4 Burr. 2091.

And it is laid (d) down as a general rule, that nuisances to any way common to all men are inquirable in the leet, and horse-causeys are taken notice of by (e) parliament; and therefore there seems to be no reason why any way leading from village to village, which does not terminate there, but is also a thoroughfare to other towns, may not properly be called a common or highway, or why a nuisance therein should not be indictable, whether it directly lead to a market-town or not; for since such a way lies open to all the king's subjects, a nuisance (f) therein cannot but be a common nuisance, and if it be not punishable by indictment, it would not be punishable at all, inasmuch as it (g) seems to be certain, that it is not punishable by action, because if

(f) Kitchen, 35.  
Palmer, 389.  
2 Roll. 412.  
(g) Moor, 180.  
Cro. El. 664.  
Co. Lit. 56.  
H. 8. 27.

if one man might bring his action in respect of the possibility of the damage which he might receive from it, all other men may do the like, which would introduce a multiplicity of actions; and therefore the distinction which is taken in some (h) books concerning this matter, seems to be very reasonable, that every way from town to town may be called a highway, because it is common to all the king's subjects, but that a way to a parish-church, or to the common fields of a town, or to a private house, or perhaps to a village, which terminates there, and is for the benefit of the particular inhabitants of such parish, house, or village only, may be called a private way, but not a highway, because it belongeth not to all the king's subjects, but only to some particular persons, each of which, as it seems, may have an action on the case for a nuisance therein.

(h) 1 Vent. 189.  
Kitchen, 35.  
1 Vent. 206.  
3 Keble, 28.  
Ld. Ray. 1174.  
Salkeld, 359.

Co. Lit. 56.

† But it hath been determined, that a street built upon a person's own ground is a dedication of the highway so far only as the public has occasion for it, viz. for a right of passage, and is not to be understood as a transfer of the absolute possession of the soil.

Strange, 1004.

Sect. 2. It hath been holden, that if there be a highway in an open field, and the people have used, time out of mind, when the ways are bad, to go by outlets on the land adjoining, such outlets are parcel of the way; for the king's subjects ought to have a good passage, and the good passage is the way, and not only the beaten track; from whence it follows, that if such outlets be sown with corn, and the beaten track be foundurous, the king's subjects may justify going upon the corn.

1 R. Abr. 390.

Cro. Car. 366.  
Douglas, 746  
to 749.

† So if one grant a way, and afterwards dig trenches in it to the hindrance of the grantee, he may fill them up again. But if a way which a man has, becomes not passable, or very bad, by the owner of the land tearing it up with his carts, so that the same be filled with water, yet he who has the way cannot dig the ground to let out the water, for he has no interest in the soil. But in such case he may bring his action against the owner of the land for spoiling the way, or perhaps he may go out of the way, upon the land of the wrongdoer, as near to the bad way as he can.

Godb. 52.

† But where a private way is spoiled by those who have a right to pass thereon, and not through the default of the owner of the land, it seems that they who have the use and benefit of the way ought to repair it, and not the owner of the soil, unless he is bound thereto by custom or special agreement.

2 Burr. 382.

† So if I have a private way without a gate, and a gate is hung up, an action lies upon the case, for I have not my way as I had before.

Litt. 267.

Sect. 3. It seemeth to be agreed, that an ancient highway cannot be changed without the king's licence first obtained upon a writ of *ad quod damnum*, and an inquisition thereon found, that such a change will not be prejudicial to the public; and it is said, that

C. Car. 266,  
267.  
Vaugh. 341.  
1 Burr. 465.  
Vide note (1)  
that infra.

that if one change a highway without such authority, he may stop the new way whenever he pleases. (1)

C. Car. 267.  
Yelv. 141, 112.

And it seemeth, that the king's subjects have not such an interest in such new way as will make good a general justification of their going in it as in a common highway; but that in an action of trespass brought by the owner of the land against those who shall go over it, they ought to shew specially, by way of excuse, how the old way was obstructed and the new one set out.

Also it is said, that the inhabitants are not bound to keep watch in such new way, or to make amends for a robbery therein committed, or to repair it.

1 Burr. 465.

† And a private act of parliament for inclosing lands, which vests a power in commissioners to set out new roads by their award, is equally strong, as to these consequences, as a writ of *ad quod damnum*.

C. Car. 267.  
22 Assize, 93.  
1 R. Abr. 390.  
Vide Taylor v.  
Whitbread,  
Douglas, 745.

*Sect. 4.* However, it is certain, that a highway may be changed by the act of God; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees change its course, and go over different ground from that whereon it used to run, yet the highway continues in the new channel in the same manner as in the old.

*At whose Charge, and by whom, the Highway ought to be repaired.*

1. What provision is made by the common law concerning this matter.

2. What by statute.

As to the first of these particulars, *viz.* What provision has been made by the *common law* for the repairs of highways.

(a) 1 R. Abr.  
890.

2 T. Rep. 106.

*Sect. 5.* It seems to be agreed, that of common right, the general charge of repairing all highways lies on the occupiers of the lands in the parish wherein they are; (a) † And, therefore, if the inhabitants of a township, bound by prescription to repair the roads within the township, be expressly exempted, by the provisions of a road act, from the charge of repairing new roads to be made within the township, that charge must necessarily fall on the rest of the parish.

(b) March, 26.  
1 Vent. 90, 183.  
189.  
Sum. 144.  
8 H. 7 5.  
Ld. R. 725.  
2 T. Rep. 232.

But it is said, that the tenants of the land adjoining are bound to scour their ditches. (b)

And there is no doubt but particular persons may be burdened with the general charge of repairing the highway in two cases, *viz.* in respect of an inclosure of the land wherein it lies; and in respect of a prescription.

And FIRST, a particular person may be bound to repair a highway in respect of an inclosure.

*Sect.*

(1) But now, by st. 55 Geo. 3. c. 78. two justices at a special sessions may divert a highway,

or stop up a useless one, observing the forms set out in the statute.

**Sect. 6.** As where the owner of lands not inclosed, next adjoining to the highway, incloses his lands on both sides thereof, in which case he is bound to make a perfect good way, and shall not be excused for making it as good as it was at the time of the inclosure, if it were then any way defective; because, before the inclosure, the people used, when the way was bad, to go for their better passage over the fields adjoining, out of the common track, which liberty is taken away by the inclosure.

1 R. Abr. 390.  
C. Car. 366.  
1 Siderfin, 464.  
Sed vide,  
1 Burr. 461 to  
466. contra.  
Ld. Ray. 1170.

**Sect. 7.** Also it hath been holden, that if one inclose land on one side, which hath been anciently inclosed of the other side, he ought to repair all the way, but that if there be not such an ancient inclosure of the other side, he ought to repair but half that way.

1 Siderfin, 464.

And it is said, that wherever one is bound to repair a highway in respect of an inclosure, and lays it open again as it was before, he shall be freed from the charge of repairing it.

† So in a writ of *ad quod damnum*, and inquisition found thereupon, after the person hath once made the road, (and it is not necessary the whole new road should go through his own soil,) the parishioners ought to keep it in repair; because being discharged from the repairing of the old road, no new burthen is laid upon them; their labour is only transferred from one place to another. But if the new road lies in another parish, the person who sued out the writ, and his heirs, ought to keep it in repair; because as the inhabitants of the other parish gained no benefit from the old road being taken away, it would be imposing a new charge upon them, for which they enjoyed no compensation.

3 Atk. 772.

† So also if a highway be inclosed by virtue of a special act of parliament for inclosing and dividing common fields, &c. it shall continue to be repaired by the parish or township, as it was before, unless otherwise directed by the act; for if he who inclosed the ground adjoining to the highway were obliged to repair, it might happen that the expense of repairing would be more than the value of his allotment.

Rex v. Flecknow, 1 Burr. 461.

**SECONDLY,** A particular person may be bound to repair a highway in respect of a prescription. (*n*)

(*n*) Where the original of a way is accounted for, the prescription is destroyed. Strange, 909. 2 Saund, 160. 27 Assize, 8. 21 Ed. 4. 38. Brook, Prescription, 49. 78.

**Sect. 8.** It is said, that a corporation aggregate may be compelled to do it by force of a general prescription, that it ought and hath used to do it, without shewing that it used to do so in respect of the tenure of certain lands, or for any other consideration; because such a corporation, in judgment of law, never dies, and therefore, if it were ever bound to such a duty, it must needs continue to be always so; neither is it any plea, that such corporation have always done it out of charity; for what it hath always done, it shall be presumed to have been always bound to do.

But

Far. 54, 55.  
21 Ed. 4. 31.  
Keilw. 52. a.  
Latch. 206.  
3 Salk. 77. 381.  
6 Mod. 150.  
190. 255.  
Salk. 357. a.

But it is said, that a person cannot be charged with such a duty by a general prescription from what his ancestors have done, because no one is bound to do what his ancestors have done, unless it be for some special reason, as the having lands descended from such ancestors, which are holden by such like service, &c. Yet it seems, that an indictment charging a tenant in fee simple with having used of right to repair such a way *ratione tenuræ terræ suæ*, is certain enough, without adding, that his ancestors, or those whose estate he hath, have always so done, for that is implied in saying, "that he has always used to do it *ratione tenuræ suæ*."

Also an occupier, as such, though at will only, is indictable for suffering a house standing upon the highway to be ruinous, &c. and the words *ratione tenuræ*, &c. if added, are surplus.

1 Mod. 112.  
3 Keble, 301.  
1 Ventris, 256.  
10 Mod. 150.  
382.  
12 Mod. 15.  
198. 409,  
Id. Ray. 725.  
922. 1162.  
Strange, 179.

*Sect. 9.* However, it seemeth certain, that whether a particular person be bound to repair a highway by inclosure or prescription, &c. yet the parish cannot take advantage of it upon the plea of "not guilty" to an indictment against them for not repairing it, but ought to set forth their discharge in a special plea. (1)

As to the Second Particular, *viz.* At whose charge, and by whom the highway ought to be repaired by force of the statutes.

The management and care of highways, by the several statutes relative to them, is under the direction of justices of the peace and surveyors, and the infringement of the several enactments punishable mostly by pecuniary forfeitures, recoverable in a summary way: for the particulars, see Burn's Justice, tit. "Highways." But as a nuisance to a highway is also an indictable offence, it is fit in this work to consider,

### *What shall be said to be a Nuisance to the Highway.*

1. What shall be said to be such a nuisance at common law.
2. What by statute.

As to the FIRST POINT, *viz.* What shall be said to be a nuisance to a highway at common law.

Kitch, 34, 35.

*Sect. 10.* There is no doubt but that all injuries whatsoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act

(1) It must appear upon the face of the indictment by what right the charge is laid upon the particular division of any parish which is in one

county only. 5 Burr. 2702; as that they have repaired time out of mind, and 276. B. R. H. 259.

act which will render it less commodious to the king's people, are public nuisances at common law.

*Sect. 11.* Also it seemeth to be clear, that it is no excuse for one who layeth such logs in the highway that he laid them only here and there, so that the people might have a passage by windings and turnings through the logs; yet it is said to be no nuisance for the inhabitants of a town to unlade billets, &c. in the street before their houses, by reason of the necessity of the case, unless they suffer them to continue there an unreasonable time after they are unloaded. (3) 2 R. Abr. 137.  
265.  
2 R. Abr. 137.

*Sect. 12.* There is no doubt but that it is a nuisance at common law to erect a new gate in a highway, as has been more fully shewn. 8 H. 7. 5.  
Kitch. 34, 35.  
8 H. 7. 5.

*Sect. 13.* Also it seemeth clear, that it is a like nuisance to suffer the ditches adjoining to a highway to be foul, by reason whereof it is impaired; or to suffer the boughs of trees growing near the highway to hang over the road, in such a manner as thereby to incommode the passage.

As to the SECOND POINT, *viz.* What shall be said to be a nuisance to the highway by statute.

*Sect. 14.* Not only all the abovementioned nuisances, which are such at common law, are esteemed also nuisances by statute, but there is also one particular nuisance which is made such by statute, and doth not seem to be taken notice of by common law, and that is the drawing of a travelling carriage with more than six horses in length, (a) the permitting whereof hath occasioned the carrying of such excessive loads in such carriage, that the weight thereof hath in many places rendered the roads unpassable. (a) For the number now permitted to be drawn, vide highway acts, Burn, tit. "Highways."

#### *How such Nuisances are to be removed and punished.*

1. In what order hedges and ditches, adjoining to the highway, ought to be kept.

2. How far all trees and bushes are to be removed from the highway.

3. In what manner all other annoyances obstructing the highway are to be removed.

4. How far all persons are punishable for taking away things made use of for the benefit of the highway.

#### 5. How

(3) A waggoner occupying one side of a public street, in the city of Exeter, before his warehouse, in loading and unloading his waggon so that both carriages and foot passengers were incommoded by his cumbersome goods lying in the way, was

held to be rightly convicted of a common nuisance, although there was room for carriages and passengers left on the other side of the street. (*R. v. Russel*, 6 E. R. 427.)

5. How far they may be punished for drawing a carriage with more than five horses in length.

6. How far drivers of carriages are punishable for misbehaviour.—See Burn's Justice, tit. "Highways."

Keilw. 34.  
Crom. 131.  
Dalt. c. 26.  
1 Black. 467.

See Carth. 212,  
213.

*Sect. 15.* By the general highway act of 13 Geo. 3. c. 78. s. 24. justices of the peace have a power to present upon their own view, or by information upon the oath of others, that a highway is out of repair. This clause is copied from former acts upon the same subject, and in the exposition of a similar clause it hath been holden, that the party against whom such a presentment shall be made cannot take any traverse to the want of repair of such highway; but it is agreed, that he may plead that some other person ought to repair the same, and traverse his own obligation to do it. Neither can I see upon what reason the former opinion is grounded, that he cannot traverse the want of repair of such highway; for since the statute expressly saves to every person who shall be touched by any such presentment his lawful traverse to the same, as he might have to an indictment of trespass or forcible entry; and since it seems clear, that every defendant to any such indictment may traverse the whole matter alleged against him, as hath been shewn more at large, tit. "Forcible Entry," s. 58. why may he not as well have the same benefit in the present case? And though the record of a justice of peace, acting by force of any statute as a judge, be not traversable; yet it seems hard by such a general rule, to make any record not traversable, which, by the express words of the statute which authorizes the making of it, is allowed to be traversable; it is true indeed, that a presentment in a court-leet is not traversable, unless it touch the party's freehold; but I do not see why such a presentment in pursuance of this statute should have the like privilege, since the statute hath no mention of such presentments in courts-leet, but gives the like traverse as is allowed by law upon any indictment of trespass, &c. (4)

N. B. This observation was applied to the former statutes upon this subject.

*Seri 16.* Also it seems to be implied in the construction of these (the highway acts) as well as of all other penal statutes, that no one ought to be convicted of any offence against them, without having notice of the accusation made against him, and an opportunity of defending himself. And therefore I shall take it for granted, that generally no one ought to be punished for any of the abovementioned offences, without being called upon to answer for himself, and having liberty to traverse the matters alleged against him: it is true, indeed, that it is generally holden, that no traverse can be taken against a presentment by a justice of

(4) It is now determined that the reasoning of Mr. S. Hawkins is correct; and that a general traverse may be presented to a presentment of a justice, that a road is out of repair, made upon his own view. In the case of *R. v. the Justices of Wiltshire*. (Burr. 1531.) which was an application for a *mandamus* to command the justices to

receive a general traverse to a presentment of a single justice that a road was out of repair, Mr. J. Yates observed, that there was no jurisdiction in this kingdom by which a defendant could be convicted unheard. And the court held that a presentment was of no more force than an indictment, and therefore traversable generally.

of peace of his own knowledge as to the want of repair; yet this opinion seems justly questionable, for the reasons before alleged.

*Sect. 17.* However, it is certain, that in all other cases, whoever is indicted or presented in any court, except a court-leet, for any offence relating to the highways, may traverse the whole matter alleged against him in such indictment or presentment.

*Sect. 18.* But it seemeth to be agreed, that he who is presented for such an offence in a court-leet, can only traverse it so far as it concerns his freehold, as by charging him with being bound to such repairs in respect of the tenure of his lands, &c. for which purpose it is certain that he may remove it by a *certiorari* into the king's bench, and there traverse it.

*Sect. 19.* Also there is no doubt, but that after conviction, or upon a demurrer or confession, any one may take exceptions to any such indictment or presentment in any court for the want of legal form; but the court in discretion will very rarely suffer a man to take such exceptions before such conviction or confession, without a certificate and affidavit that the ways are in good repair.

Therefore, for the better understanding in what cases it may be safe to demur to, or confess an indictment or a presentment of this kind, I shall lay down the following rules concerning them.

### *Rules for Indictments relative to Highways.*

*Sect. 1. I.* That it is (a) safest in every such indictment to shew both the place from which, and also the place to which; the way supposed to be out of repair doth lead; yet exceptions for want of such certainty have sometimes been (b) disallowed; however it seems certain, that there is no necessity to shew (c) that a highway leads to a market town, because every highway leads from town to town.

tion of this kind is disallowed. 1 Brownl. 9.

(c) Palmer, 389. 2 Roll. 412. B. R. II. 316.

*Sect. 2. II.* That it is necessary (d) in every such indictment expressly to shew in what place the nuisance complained of was done, for which (e) cause an indictment for stopping a way at D. leading from D. to C. is not good; for it is impossible that a way leading from D. should be in D. and no other place is alleged.

(d) 3 Keb. 644.

(e) 2 R. Abr. 81. Cowp. 111.

*Sect. 3. III.* So also it hath been adjudged, that an indictment against the parish of B. for not repairing a road leading from A. to B. is exclusive of B. and therefore had, and not aided by a subsequent allegation, "that a certain part of the same "highway situate in B. is in decay, &c."

Rex v. Gamlingay, 3 Term Rep. 316.

*Sect. 4. IV.* So also in a presentment the highway must be

Str. 181. Cowp. 111.



be alleged to lie in the parish, otherwise the parish is not bound to repair.

Stra. 44.  
1 H. Bl. Rep.  
351.  
Sayer, 119.

*Sect. 5. V.* But in an indictment for a nuisance, it is not necessary to mention the *termini* of a highway. Also if there be two vills in a parish, it is not necessary in an indictment for a nuisance to shew in which vill the nuisance lies.

Cro. Jac. 324.  
Latch. 183.

*Sect. 6. VI.* That every indictment ought also certainly to shew to what part of the highway the nuisance did extend, as by shewing how many foot in length, and how many foot in breadth it contained, or otherwise the defendant will neither know of the certainty of the charge against which he is to make his defence, neither will the court be able from the record to judge of the greatness of the offence, in order to assess a fine answerable thereunto; and upon this ground it hath been adjudged, that an indictment for stopping a certain part of the king's way at K. is nought, for the uncertainty thereof.

2 R. Abr. 80,  
81.

2 R. Abr. 81.

*Sect. 7. VII.* Also it hath been resolved, that the place wherein such a nuisance is alleged, is not sufficiently ascertained in such an indictment by shewing that it contained so many foot in length, and so many in breadth, by estimation.

Sayer, 98.  
167. 301.

† *Sect. 8. VIII.* An indictment for a nuisance in laying soil in a highway is not bad for want of the length and breadth of the nuisance being set out. Nor for a nuisance in digging two grips or ditches in a certain footway. Nor for a nuisance that a certain highway and bridge are in a ruinous condition.

Salkeld, 359.  
6 Modern, 255.  
Contra, Sayer,  
168, 169.  
(a) C. Eliz. 63.

† *Sect. 9. IX.* That every such indictment must shew, that the way wherein a nuisance is alleged is a way common to all the king's people: for which cause it hath been resolved, that an indictment for a nuisance to a (a) horseway, without adding that it is a highway, is nought.

(b) See 2 R.  
Abr. 83.  
1 Ventris, 208.  
Popham, 206.  
2 Keble, 728.  
(c) 1 Vent. 208.  
3 Keble, 28.

*Sect. 10. X.* And upon the same ground it seemeth also, that an indictment for a nuisance to a common footway to the church of D. for (b) all the parishioners of D. is not good; yet it (c) seems, that if those last words, *viz.* "for all parishioners of D." had been omitted, such an indictment might be maintained.

B. R. H. 316.

† *Sect. 11. XI.* That is not necessary to say that it is a highway for this or that particular kind of carriage; because if it is stated to be "a common highway," it shall be intended a highway for all manner of things.

Aspidal v.  
Brown, 3 Te  
Rep. 265.

† *Sect. 12. XII.* That in pleading a public highway, it is sufficient to say, "that before and at the said time when, &c. there was, and of right ought to have been, a certain common public highway, leading, &c. for all the liege subjects, &c. to go, return, pass, and repass, on foot and on horseback, and with their cattle and carriages at all times of the year, &c." without alleging that it had been a highway from time immemorial.

*Sect.*

**Sect. 13. XIII.** That it is not safe in an indictment against a common person for not repairing a highway, which he ought to have done in respect of the tenure of certain lands, barely to say that he was bound to repair it *ratione tenuræ terræ*, without adding (a) *sua*. (1)

(a) Noy, 93.  
3 Keble, 855.

† **Sect. 14. XIV.** So also an indictment against a particular division of a parish, for not repairing a common highway, stating that the inhabitants thereof, from time whereof the memory of man is not to the contrary, ought to repair and amend, is not sufficient; for the parish at large being bound of common right to repair, it ought to shew by what right the charge was laid on the particular division.

Rex v. Great Broughton, Burr. 2700.  
S. P. Rex v. Penderryn, 2 Term Rep. 513.

**Sect. 15. XV.** Also it is said, that in an indictment against a (b) bishop, &c. for not repairing a highway, in respect of certain lands, it ought to be shewn in what capacity he ought to repair it, because otherwise it cannot be known in what capacity the process is to be awarded against him.

(b) 3 Keb. 58.  
Vide Vent. 331.  
according.  
2 Keble, 514.  
Raymond, 182.

**Sect. 16. XVI.** That in every such indictment the fact alleged against the defendant must be expressed in such proper terms, that it may clearly appear to the court to have been a nuisance: and for this cause it hath been resolved, that a presentment for diverting a highway is not good, because a highway cannot be diverted, but must always continue in the same place where it was, howsoever it be obstructed, and a new way made in another place.

11 Modern, 56.  
1 Anderson, 234.  
Popham, 206.

**Sect. 17. XVII.** That an indictment against a man for stopping a highway in his own land, is good without laying the offence done *vi et armis*.

2 Roll. Abr. 79.  
81.

**Sect. 18. XVIII.** Also it is said, that a presentment, that a highway in such a place is decayed by the defaults of the inhabitants of such a town, is good without naming any person in certainty.

2 Roll. Abr. 79.

**Sect. 19. XIX.** But it hath been adjudged, that an indictment against particular persons must specially charge them every one; for which cause it hath been resolved, that an indictment against several for not repairing their streets, that they, *et eorum uterque*, did not repair them, is not good.

2 Roll. Abr. 81.

**Sect. 20. XX.** That the defendants ought not to plead *quod non debent reparare*, without shewing who ought.

1 Sid. 140.  
Carth. 213.  
11 Mod. 273.  
12 Mod. 13.

**Sect. 21. XXI.** That the defendants shall not be discharged by submitting to a fine, but a *distringas* shall go *in infinitum* till they repair.

Salkeld, 358.  
6 Mod. 163.

† **Sect. 22. XXII.** That if a parish be situate part in one county and the rest in another county, and a highway lying in one part be out of repair, an indictment against the inhabitants of

Rex v. Clifton, 5 Term Rep. 498.

(1) It hath been held, upon consideration, that *ratione tenuræ* is sufficient without *sua*. Strange, 187.  
1 Vent. 331.

of that part of the parish only is bad ; for the indictment must be against the whole parish.

*Of Nuisances relating to Bridges.*

By the great charter, 9 H. 3. c. 15, no town nor freeman shall be distrained to make bridges nor banks, but such as of old time and of right have been accustomed. See also 2 Inst. 701. 1 Burr. 267. §

And now I am in the second place to consider nuisances relating to bridges in particular; for the better understanding whereof I shall examine,

1. How public bridges are to be repaired by the common law.
2. How by the statute.

As to the FIRST POINT, I shall consider,

1. In what manner, and by whom, such bridges are to be repaired by common law.
2. In what manner persons bound to such repairs are to be proceeded against.

As to the first of these particulars, *viz.* In what manner, and by whom, public bridges are to be repaired by the common law.

45 Assize, p. 45.  
Dalton, c. 14.

*Sect. 1.* It seemeth to be clear, that those who are bound to repair such bridges must make them of such height and strength, as shall be answerable to the course of the water, whether it continue in the old channel, or make a new one; and that they are not punishable as trespassers for entering on any adjoining land for such purpose, or for laying thereon the materials requisite for such repairs.

(a) 2 Inst. 701.  
Sum. 143.  
C. Car. 365.  
6 Mod. 337.  
Salk. 359, 359.

Also it seemeth to be clearly (a) settled, that of common right the charge of repairing all common bridges lies upon the county wherein they are, unless part thereof be within a franchise; in which case it is said, that so much as is within the franchise shall be repaired by those of the franchise.

(b) 2 Inst. 700.  
701.  
Sum. 143.  
Dalton, c. 14.  
Far. 54, 55.

*Sect. 2.* Also it seemeth to be (b) certain, that such charge may be cast upon a corporation aggregate, either in respect of a special tenure of certain lands, or in respect of a special prescription, and that it may be cast upon any other persons (1) by reason of such a special tenure, as hath been shewn more at large under the second general head of the precedent division.

(c) 2 Inst. 701.  
6 Mod. 307.  
Salkeld, 359.  
C. Car. 365.

But it is (c) said, that a man shall not be bound to repair a new bridge built by himself for the common good; but that the county

(1) Therefore a tenant at will of a house which adjoins to a common bridge, although he is not bound as between landlord and tenant to repair the house, yet if it become dangerously ruinous to

the necessary intercourse of the bridge, as tenant at will only, he is bound, by reason of his possession, to repair it, so far as to prevent the public being prejudiced. *Ld. Raym.* 856.

county shall be bound to repair it, if it become of public convenience. (2)

† Therefore where a particular district rebuilt a foot bridge over a more convenient part of the stream, and converted it into a bridge for horses, carts, and carriages; as the district was not bound by custom to build or repair such a bridge, but a foot bridge only, and as they built a quite different bridge, in a different place, which proved of common public utility to the county, the court were unanimous, that the county, and not the district, were bound to repair it. Burr. 2594.  
1 Bl. Rep. 685.

As to the second particular, *viz.* In what manner persons bound to such repairs are to be proceeded against.

*Sect. 3.* It seemeth to be clear, (c) that any particular inhabitant or inhabitants of a county, or tenant or tenants of land charged to the repairs of such a bridge, may be made defendants to an indictment for not repairing it, and be liable to pay the whole fine assessed by the court for the default of such repairs, and shall be put to their remedy at law for a contribution from those who are bound to bear a proportionable share in the charge; for the necessity of the case requires the greatest expedition in cases of this nature. (c) 1 Jon. 273.  
Popham, 192.  
6 Mod. 307.  
Salkeld, 358.  
12 Mod. 198.  
409.  
Ld. Raym. 725.  
792, 804. 856.  
858. 1169.  
1175. 1249.  
11 Mod. 56.  
F. N. B. 235.  
Hard. 131.

Register, 268. 2 Inst. 700.

† But no action will lie by an individual against the inhabitants of a county, for an injury sustained in consequence of a county bridge being out of repair. Cowp. 687.

*Sect. 4.* Also it hath been (d) resolved, that it is not sufficient for the defendants to an indictment for not repairing a bridge, to excuse themselves by shewing either that they are not bound to repair the whole, or any part of the bridge, without shewing what other person is bound to repair the same; and it is said, that in such case the whole charge shall be laid upon such defendants, by reason of their ill plea. (d) 2 Lev. 112.  
Popham, 192.  
43 Assize, 37.  
8 Mod. 120.  
43 Assize, 37.  
B. Presentment,  
22, and 29.

*Sect. 5.* It is said, that where such defendants plead, that A. B. ought to repair the bridge mentioned in the indictment, and take a traverse to the charge against themselves, the attorney-general in this special case may take a traverse upon a traverse, and insist that the defendants are bound to the repairs, and traverse the charge alleged against A. B. and that an issue ought to be taken on such second traverse; and that the attorney-general may afterwards surmise, that the defendants are bound to repair it, and that the whole matter shall be tried by an indifferent jury, &c. See 1 Sid. 140.  
2 Lev. 112.

† But the indictment ought to shew what sort of bridge it is, whether for carts and carriages, or for horses, or foot men only. And if the duty to repair arise by reason of the tenure of certain lands, the indictment must shew where those lands lie. Ld. Raym. 1175.  
2 Hale, 181.

*Sect.*

(2) So where a miller built a bridge across a stream near his mill, through which there was a public ford before, and the public used the bridge

ever after it was built, it was held that the county was bound to repair.—2 M. and S. 513.

6 Mod. 307.  
Burr. 839.

*Sect. 6.* It seems, that no inhabitant of a county ought to be a juror for the trial of an issue, whether the county be bound to such repairs or not; but it is said, that he may be a good witness. (3)

As to the SECOND POINT, viz. In what manner such bridges are to be repaired by statute.

2 Inst. 701, 702.  
6 Mod. 255.  
A remedy to repair decayed bridges.  
13 Coke, 33.  
Popham, 192.

*Sect. 7.* And by 22 Hen. 8. c. 5. it is enacted, "That the justices of peace in every shire of this realm, franchise, city, or borough, or four of them at the least, whereof one to be of the quorum, may inquire, hear, and determine, in their general sessions, of all manner of annoyances of bridges broken in the highways, to the damage of the king's liege people, and to make such process and pains upon every presentment afore them, for the reformation of the same, against such as owen to be charged for the making or amending of such bridges, as the king's justices of his bench use commonly to do; or as it shall seem by their discretions to be necessary and convenient for the speedy amendment of such bridges."

Justices may proceed against defaulters.

*Sect. 8.* And by 22 Hen. 8. c. 5. s. 2 and 3. it is further enacted, "That where it cannot be known and proved what hundred, riding, wapentake, city, borough, town or parish, nor what person certain, or body politic, ought of right to make such bridges decayed, by reason whereof such decayed bridges, for lack of knowledge of such as owen to make them, for the most part lie long without any amendment, to the great annoyance of the king's subjects; in every such case the said bridges, if they be without city or town corporate, shall be made by the inhabitants of the shire or riding, within which the said bridge decayed shall happen to be: and if it be within any city or town corporate, then by the inhabitants of every such city or town corporate wherein such bridges shall be. And if part of any such bridges so decayed happen to be in one shire, riding, city, or town corporate, and the other part thereof in another shire, riding, city, or town corporate, or if part be within the limits of any city or town corporate, and part without, or part within one riding, and part within another, that then in every such case the inhabitants of the shires, ridings, cities, or towns corporate, shall be charged and chargeable to amend, make and repair such part and portion of such bridges so decayed, as shall lie and be within the limits of the shire, riding, city, or town corporate, wherein they be inhabited at the time of the same decays."

Justices may tax the inhabitants.  
Vide 1 Keb.  
422.

*Sect. 9.* And by 22 Hen. 8. c. 5. s. 4. it is further enacted, "That in every such case where it cannot be known and proved what persons, lands, tenements, and bodies politic owen to make and repair such bridges, that for speedy reformation and amending of such bridges, the justices of the peace within the shires  
" or

(3) The same objection may lie against the justices, where they are all interested; in which case the trial shall be in the next county. Vide Burrow,

859, 660. But by 1 Ann. an inhabitant may be a witness.

"or ridings where such decayed bridges being out of cities and towns corporate, and if it be within cities or towns corporate, then the justices or peace within every such city or town corporate, or four of the said justices at the least, whereof one to be of the *quorum*, within the limits of their several commissions and authorities, may call before them the constables of every town and parish, being within the shire, riding, city or town corporate, as well within liberty as without, wherein such bridges or any parcel thereof shall happen to be, or else two of the most honest inhabitants within every such town or parish in the said shire, riding, city or town corporate, by the discretion of the said justices of peace, &c. And at and upon the appearance of such constables or inhabitants, the said justices of peace, &c. with the assent of the said constables or inhabitants, may tax and set every inhabitant in any such city, town or parish, within the limits of their commissions and authorities, to such reasonable aid and sum of money, as they shall think by their discretions convenient and sufficient for the repairing, re-edifying, and amending of such bridges."

Vide infra, 18 Geo. 2. which seems to make this part of the act useless.

Sect. 10. And by 22 Hen. 8. c. 5. s. 4. "After such taxation made, the said justices shall cause the names and sums of every particular person so by them taxed, to be written in a roll indented; and shall also have power and authority to make two collectors of every hundred, for collection of all such sums of money by them set and taxed; which collectors receiving the one part of the said roll indented, under the seals of the said justices, shall have power and authority to collect and receive all the particular sums of money therein contained, and to distress every such inhabitant as shall be taxed, and refuse payment thereof, in his lands, goods and chattels, and to sell such distress, and of the sale thereof retain and perceive all the money taxed, and the residue (if the distress be better) to deliver to the owner thereof."

Two collectors to be made. See vide infra. 1 Ann. c. 18, &c.

Sect. 11. And by 22 Hen. 8. c. 5. s. 4. "The same justices, or four of them, within the limits of their commissions and authorities, may also name and appoint two surveyors (a), which shall see every such decayed bridge repaired and amended from time to time as often as need shall require, to whose hands the said collectors shall pay the said sums of money taxed and by them received; and that the collectors and surveyors, and every of them, and their executors and administrators, and the executors and administrators of them, and every of them, from time to time, shall make a true declaration and account to the justices of peace of the shire, riding, city, or town corporate, wherein they shall be appointed collectors or surveyors, or to four of the same justices, whereof one to be of the *quorum*, of the receipts, payments, and expenses of the said sums of money."

(a) The office of surveyors, for the sake of convenience, is usually annexed by the justices to the office of the high constables. 1 Burn, 280.

Sect. 12. And by 22 Hen. 8. c. 5. s. 4. "If they or any of them refuse that to do, that then the same justices of peace, or four of them, from time to time, by their discretions, shall have power and authority to make process against the said collectors and surveyors, and every of them, their executors and adminis-

trators,

"trators, and the executors and administrators of every of them, by attachments under their seals, returnable at the general sessions of peace: and if they appear, then to compel them to account, as is aforesaid; or else if they or any of them refuse that to do, then to commit such of them as shall refuse to ward, there to remain without bail or mainprise, till the said declaration and account be truly made."

Justices may  
make process  
into every shire.

*Sect. 13.* And by 22 Hen. 8. c. 5. s. 5. it is further enacted, "That where any bridge or bridges lying in one shire or riding, and such persons inhabitants, bodies politic, lands or tenements, which owen to be charged with the making and amending of such bridges lien and abiden in another shire or riding, or where such bridges been within any city or town corporate, and the persons inhabitants, bodies politic, lands or tenements, that owen to make or repair any such bridges lien and been out of the said cities and towns corporate, in every such case the justices of peace of the shire, city, or town corporate, within which such decayed bridges, or any part thereof, shall happen to be, shall have power to inquire, hear, and determine all such annoyances, being within the limits of their commissions and authorities. And if the annoyance be presented, then to make process into every shire within this realm, against such as owen to make or amend any such bridges so presented before them to be decayed, to the annoyance and let of the passage of the king's subjects, and to do further in every behalf in every such case, as they might do by authority of the said act, in case that the persons, &c. which owen to be charged to the amending or making of such bridges, &c. were in the same shire, &c. where such annoyance shall happen to be."

Which the  
sheriffs shall  
serve.

*Sect. 14.* And by 22 Hen. 8. c. 5. s. 5. "All sheriffs, and bailiffs of liberties and franchises, shall truly serve and execute process as shall come to their hands from the said justices of peace, afore whom any presentment shall be had for any such annoyance, according to the tenor and effect of the said process to them directed, &c. on pain to make such fine as shall be set on them by the discretion of the said justices."

*Sect. 15.* But by 22 Hen. 8. c. 5. s. 6. it is provided, "That nothing in the said act contained shall be prejudicial to the liberties of the five ports, or members of the same."

Cinque ports  
excepted.

*Sect. 16.* And by 22 Hen. 8. c. 5. s. 7. for reformation of annoyances of bridges within the said ports and members, it is further enacted, "That the warden, mayors, and bailiffs elected, and jurats of the same ports, and every of them, have power and authority to inquire, hear, and determine all manner of common annoyances of bridges within the same ports and members, and to make such process, pains, taxations, and all other things within the same ports and members, as the justices of the peace may do in other shires or places out of the same ports, by virtue of the said act in every behalf."

Allowance to  
collectors.

*Sect. 17.* And by 22 Hen. 8. c. 5. s. 8. it is further enacted, "That the said justices, &c. may allow such reasonable costs and charges

“charges to the said surveyors and collectors, as by their discretion shall be thought convenient.”

*Sect. 18.* And by 22 Hen. 8. c. 5. s. 9. it is further enacted, Of roads at the ends of bridges.  
 “That such part and portion of the highways in every part of  
 “this realm, as well within franchise as without, as lie next adjoining to any ends of any bridges within this realm, distant from  
 “any of the said ends by the space of three hundred foot, be  
 “made, repaired, and amended, as often as need shall require;  
 “and that the justices of peace in every shire of this realm, franchise, city, or borough, or four of them at the least, whereof  
 “one to be of the *quorum*, within the limits of their commissions  
 “and authorities, may inquire, hear, and determine in their  
 “general sessions, all manner of annoyances of and in such highways, so being and lying next adjoining to any ends of bridges  
 “within this realm, distant from any one of the ends of such  
 “bridges three hundred foot, and to do in every thing concerning  
 “the making, repairing, and amending such highways, &c. in as  
 “large and ample manner as they might and may do to and for the  
 “making, repairing, and amending of bridges, by virtue of the  
 “said act.”

In the construction of this statute, the following opinions have been holden.

*Sect. 19.* FIRST, That no private bridges are within the purview thereof, but only such as are common in the highways, where all the king's liege people have or may have passage. 2 Inst. 701.  
Salk. 359.  
6 Mod. 255,  
256.

*Sect. 20.* SECONDLY, That unless the justices of the peace of a county, or town, &c. be four in number, and one of them of the *quorum*, they have no manner of jurisdiction by virtue of this statute. 2 Inst. 701,  
702.

*Sect. 21.* But it is said, that the justices of the peace of the county in which such town, being not a county of itself, and wanting such a number of justices, shall lie, may, by virtue of the first clause of the statute, determine all annoyances of bridges within such town, &c. if it be known what persons in certain are bound to repair the same: but if it be not known, it seems that such annoyances are left to the remedy of the common law, because the clause, which in such case authorizes the justices of the peace to tax all the inhabitants, seems expressly to confine the power of taxing the inhabitants of such towns to their own justices, &c.

*Sect. 22.* THIRDLY, That all householders dwelling in any county or town, &c. whether they occupy any lands or not; and also all persons who have lands in their own possession or manurance, whether they dwell in the same county, &c. or not; and also all bodies politic, either residing in, or having lands in their own hands in a county, &c. are liable to be taxed as inhabitants, within the meaning of the statute. 2 Inst. 703.

*Sect. 23.* FOURTHLY, That the taxation to be made in pursuance of the statute ought to be assessed distinctly on each inhabitant, and not on a whole hundred, parish, or town, in general. 2 Inst. 704,  
Vide 1 Keb.  
91.

*Sect.*



2 Inst. 704.

*Sect. 24. FIFTHLY*, That all privileges of exemptions and discharges from contribution to the repairs of decayed bridges, whether such exemptions were originally derived from charter or act of parliament, or any other foundation whatsoever, are taken away by the express words of the statute, "That the justices, &c. shall tax and set every inhabitant."

1 Keble, 68.

*Sect. 25.* It hath been questioned, whether a borough which hath no bridge within its own limits, be not liable to contribute to the repairs of a county bridge.

Vide the next section, where the charges are directed to be paid out of the county rate. Moore, 103. 1. Hale 181.

† *Sect. 26.* And by 1 Anne, st. 1, c. 18. to prevent more money being raised than is necessary, and to direct the application of what is raised, it is enacted, "That the justices in sessions shall have full power, upon due presentment to them made that any bridge within their respective jurisdictions is out of repair, and which by them hath usually been or ought to have been repaired, to assess every town, parish, or place, within their respective commissions, in the usual proportions toward the repair of bridges, to be levied and collected by the constables, or by such other person or persons as the said justices in sessions shall direct, and paid by the said collectors to the high constables of every hundred, in six days after they shall have received the same, and the high constables shall in ten days after the receipt thereof pay the same to such persons as the said justices shall in sessions appoint to be treasurers of the same (allowing the said persons not exceeding three-pence in the pound), to be employed and accounted for according to the orders and directions of the said justices for and towards the amending of such decayed bridges, and the highways at the end of such bridges, as need shall require, which assessments shall be levied by distress within ten days after demand; and every constable or other person who shall neglect to assess, collect, or pay the money as aforesaid, shall forfeit forty shillings, and every treasurer that shall pay any money but by the order of the justices as aforesaid shall forfeit five pounds; and all fines, issues, penalties, or forfeitures, upon any presentment or indictment for not repairing, &c. shall be paid into the hands of the treasurer for the purposes aforesaid, and not into the exchequer. And all questions concerning the repairs aforesaid shall be determined in the same county wherein they lie, and no presentment or indictment shall be removed by certiorari (a) out of the county into any other court, except the right of repairing by private persons (or by 5 and 6 Will. & Mary, c. 11. the right between parishes) came in question, and on which question inhabitants are admissible witnesses. The general issue may be pleaded, and this act, and the 22 Hen. 8. may be given, with any special matter, in evidence, and the plaintiff shall be liable to pay double costs."

(a) A certiorari lies upon an order of justices concerning a private bridge, pursuant to a private statute; but they ought to return the act upon which their order is founded. Dalt. 504. And it has been determined, that this act of Queen Anne extends only to bridges where the county is charged to repair, and that where a private person or parish is charged, the 5 and 6 Will. 3. c. 11. hath allowed the granting a certiorari. Strange 900.

The expense of repairing bridges to be raised by a county rate.

† *Sect. 27.* It is also enacted by 12 Geo. 2. c. 29. s. 13. for the more easy assessing, levying, and collecting the county rates, "That no part of the money to be raised and collected in pursuance of this act shall be applied to the repairs of any bridges, &c. until presentments be made by the respective grand juries, at

“ at the assize, great sessions, general gaol delivery, or general or  
 “ quarter sessions of the peace, held for the county or place, of  
 “ the insufficiency, inconveniency, or want of reparation of their  
 “ bridges, &c. &c.

† *Sect. 28.* Also it is further enacted, s. 14. “ That when any  
 “ public bridges, ramparts, banks, or cepts, or other works, are  
 “ required to be repaired at the expense of any county or place,  
 “ the justices of the peace at their grand or quarter sessions  
 “ respectively, or the greater part of them, then and there assem-  
 “ bled, if they think proper and convenient, after presentment to  
 “ be made as aforesaid of the want of reparation of such bridges,  
 “ ramparts, banks, or cepts, may contract and agree with any per-  
 “ son or persons for rebuilding, repairing, and amending the same,  
 “ and all other works which are to be repaired and done by  
 “ assessment in the respective counties or places, for any term or  
 “ terms of years not exceeding seven years at a certain annual  
 “ sum, payment or allowance for the same; such contractor or  
 “ contractors giving sufficient security for the due performance  
 “ thereof to the clerk of the peace or other officer of the place  
 “ respectively; and such justices at their respective general or  
 “ quarter sessions, shall give public notice of their intention of  
 “ contracting as aforesaid; and such contracts shall be made at  
 “ the most reasonable price proposed; and all contracts when  
 “ agreed to, and all orders relating thereto, shall be entered in a  
 “ book to be kept by the clerk of the peace or other officer re-  
 “ spectively for that purpose, and kept among the records of the  
 “ place, to be from time to time inspected by any of the said jus-  
 “ tices within the limits of their commissions, and by any person  
 “ or persons employed concerning the same without fee or re-  
 “ ward.”

Justices may  
contract for  
the repair of  
bridges.

† *Sect. 29.* It is also further enacted by 14 Geo. 2. c. 33.  
 “ That the justices of the peace of any county or place, at their  
 “ general sessions or general quarter-sessions assembled, or the  
 “ major part of them, shall have power to purchase of, or agree  
 “ or contract with any person or persons, bodies politic or cor-  
 “ porate, for any piece or parcel of land adjoining or near to any  
 “ county bridge within the limits of their respective commissions,  
 “ for the more commodious enlarging, or convenient rebuilding  
 “ of the same; which pieces or parcel of land shall not exceed  
 “ one acre in the whole for any such bridge, and shall from time  
 “ to time be paid for by the respective county treasurers out of  
 “ any monies raised or to be raised by virtue of 12 Geo. 2. c. 29.  
 “ such treasurers being thereunto authorized by orders under the  
 “ hands and seals of the justices at sessions, or the major part of  
 “ them; which lands so purchased shall be conveyed as the said  
 “ justices in sessions shall appoint, in trust, for the uses and pur-  
 “ poses of enlarging or rebuilding such bridges respectively.”

Justices may  
purchase the  
adjoining land  
to rebuild.

† *Sect. 30.* It hath been determined, that if the justices at  
 sessions appoint a committee of twelve magistrates to inspect  
 the state of a county bridge, and to make any new contract for  
 repairing or rebuilding, to be executed by the clerk of the peace,  
 on behalf of the county, and they afterwards make an order,  
 adopting the contract for the rebuilding proposed by the com-  
 mittee, which order is executed by the clerk, and confirmed by  
 the

*Rex v. Justices  
of Glamorgan-  
shire, 5 Term  
Rep. 279.*

the justices at a subsequent sessions, the acts of the committee are the acts of the sessions, and the authority given to the committee and exercised by them is good.—See further, 43 Geo. 3. c. 29. as to mode of obtaining materials for repairs, and 54 Geo. 3. c. 90. and 55 Geo. 3. c. 143.

### *Of Nuisances relating to Public Houses.*

For the better understanding of nuisances relating to public houses, I shall consider,

1. In what manner they are prevented and restrained by the common law.

2. In what manner by statute.

As to the FIRST POINT, viz. In what manner nuisances relating to public houses are prevented and restrained by the common law.

(a) Palm. 374.

2 Roll. 345.

(b) Sum. 146.

Cro. Car. 549.

Dalton, c. 7.

(c) Sum. 146.

(d) 2 Hale, 174.

Dalt. c. 7.

Palm. 374.

2 Roll. 345.

(e) Palm. 374.

2 Roll. 345.

(f) 10 H. 7. 8.

39 H. 6. 18, 19.

9 Coke, 87.

(g) Dy. 158.

B. Ac. sur

Cas. 76. 92.

(h) H. P. C. 146.

Dalton, c. 7.

(i) 5 E. 4. 2.

(k) Palm. 374.

2 Roll. 345, 346.

8 Co. Caley's

case.

Blackerby, 169.

Cro. Eliz. 622.

Brownlow, 254.

Clayt. 97.

(l) 2 Roll. Ab.

84, 85.

*Sect. 1.* It seems to be agreed, that the keeper of an inn may, by the common law, be indicted and fined, as being guilty of a public nuisance, (a) if he usually harbour thieves, or persons of scandalous reputation, or (b) suffer frequent disorders in his house, or take exorbitant prices, or set (c) up a new inn in a place where there is no manner of need of one, to the hindrance of other ancient and well-governed inns, or (d) keep it in a place in respect of its situation wholly unfit for such a purpose.

*Sect. 2.* And it seems also to be clear, that if one who keeps a common inn, refuse either to receive a traveller as a guest into his house, or to find him victuals, or (e) lodging, upon his tendering him a reasonable (f) price for the same, he is not only liable to render (g) damages for the injury in an action on the case at the suit of the party grieved, but may also be (h) indicted and fined, at the suit of the king. Also it is said, that he may be compelled by the constable (i) of the town to receive and entertain such a person as his guest, and that it is no way (k) material whether he have any sign before his door or not, if he make it his common business to entertain passengers.

Keilw. 50. 11 and 12 Will. 3. c. 15. s. 2. 1 Salk. 388. Moor, 877. 12 Mod. 255. Carth. 150. Shower, 268.

*Sect. 3.* It seems to have been always clearly (l) agreed, that he who has an inn by prescription, may lawfully enlarge it upon the same land which has been used with it, either by erecting new buildings thereon, or turning stables into chambers of entertainment, and that he shall have the same privilege in such new parts of his house as in any of the old.

*Sect. 4.* Also it seems to be (m) settled at this day, that any person may lawfully set up a new inn, unless it be inconvenient to the public in some of the respects taken notice of in the first section, and that he has no need of any license from the king for this purpose, for the keeping of an inn is no franchise, but a lawful trade, open to every subject. But if an inn degenerate into an alehouse, by suffering disorderly tipping, it shall be deemed as such.

(m) 2 Roll. A.

84.

Salk. 45.

2 Roll. 345.

Palm. 367, 374.

2 Keb. 506.

1 Buls. 109.

Salk. 45.

Blackerby, 170.

Godbolt, 345.

Hutton, 100.

Cro. Jac. 326.

*Sect.*

Sect. 5. But it is said by Dalton, that innkeepers ought to have license, and be bound by recognizance, for keeping good order, as alehouse-keepers are. Dalton, 56.  
133. 204.  
1 Burrow, 22.

Sect. 6. And by the commission of the peace, two justices, one whereof shall be of the *quorum*, may inquire of innholders, and of all and singular other persons, who shall offend in the abuse of weights and measures, or in the sale of victuals, against the form of the ordinances in that behalf made.

Sect. 7. By 5 and 6 Edw. 6. c. 25. s. 1. 6. and 26 Geo. 2. c. 31. "None shall be admitted or suffered to keep any common alehouse or tippling-house, except in fairs, but such as shall be allowed in the open sessions, or by two justices of peace, whereof one to be of the *quorum*."

And upon these clauses the following constructions have been made.

† Sect. 8. FIRST, that the exception respecting fairs is made from the necessity of accommodating the persons who resort to them, and therefore it seems only to allow the unlicensed sale in the place where the common fair is held, and not in any private house which may be within the limits of the town where such fair is kept, especially where there are licensed alehouses sufficient: and those who shall brew such ale or beer, to be sold by them in fairs, must take care to give notice to the gaugers, that the same may be surveyed; for though they are exempted from taking out a license, they must pay the duties of excise.

† Sect. 9. SECONDLY, That houses at public watering-places, where they take in lodgers and boarders, coming to use the waters during the season, and dress their victuals, and supply them with ale, beer, and other liquors, and entertain their horses, at so much a day, but sell to no other persons, are not such public houses as require to be licensed. Parker v. Flint,  
12 Mod. 254.

† Sect. 10. But by 26 Geo. 2. c. 13. s. 11. "No justice of the peace, being a common brewer of ale or beer, innkeeper or distiller, or a seller of or dealer in ale or spirituous liquors, or interested in any of the said trades, or being a victualler or maltster, shall be capable, or have any power to grant licenses for selling ale or beer, or any other liquors, but the same shall be void." No justice who  
deals in malt or  
spirituous  
liquors shall  
interfere in  
granting  
licenses.

As to the SECOND POINT, In what manner Public Houses are restrained by statutes. Both the time and mode of licensing public houses, and the regulations to be observed in the conduct of them, are enforced by pecuniary and other penalties, recoverable or inflicted in a summary mode. It is matter which does not fall properly within the range of this work, we therefore refer to Burn's Justice, tit. "Alehouses," where the matter is properly treated and arranged. Some regulations, however, subject by statute to indictment, may properly be mentioned here.

Sect. 11. By 12 Edw. 2. c. 6. "No officer in city or in borough, that by reason of his office ought to keep assizes of wines and victuals, so long as he is attendant to that office, shall not merchandize for wines nor victuals, neither in gross  
" nor

"nor by retail; and if any be convict of such offence, the merchandize shall be forfeited to the king, and the third part thereof delivered to the party that sued for the same," &c.

† Sect. 70. By 3 Hen. 8. c. 8. "As often as any victualler chosen to bear any office within any city, borough, or town-corporate, which for the time that he shall stand and be in such office should have the assessing and correction for selling of victuals, that then two discreet and honest persons of the same city, borough, or town-corporate, not being victuallers, nor any of them being a victualler, shall be chosen by the commonalty of the same city, borough, or town-corporate, in like form as the said officer shall be chosen; which two persons, with the said officer, shall be sworn truly to set and set the prices and assizes of victual there, for the time that any such victualler shall abide in the same office: and that then it shall be lawful to all and every of the said officers, after the same victuals be set and sessed by the same officer, and the said two persons, or one of the same two persons, the other being absent, to merchant and sell wines, and all other victual in gross, and at retail, during the time that he shall be in any such office, without any thing therefore to forfeit; the said statute, act, and ordinance of 12 Edw. 2. or any other act or acts, ordinance, or statute to the contrary made in any wise notwithstanding."

Vide C. Jac.  
609, 610.  
2 Roll. 225,  
226.

† Sect. 13. By 21 Jac. 1. c. 21. "All hostlers or innholders shall sell their horse-bread, hay, oats, beans, pease, provender, and all kinds of victual, both for man and beast, for reasonable gain, having respect to the prices for which they shall be sold in the markets adjoining, without taking any thing for litter."

Carthew, 150.  
Skinner, 291.  
Raymond, 162.  
Roll. Ab. 95.  
9 Hen. 6. 53.

"And every hostler and innkeeper in any town or village, being a thoroughfare, and no city, town-corporate, or market-town, wherein any common baker, having been an apprentice to the trade for seven years, is dwelling, may make within his house horse-bread sufficient, lawful, and of due assize, according to the price of grain or corn; any thing in the said statute contained to the contrary notwithstanding."

"And if the horse-bread, which any of the said hostlers or innholders shall make, be not sufficient, lawful, and of due assize, according to the price of grain and corn, as above said; or that if any of them shall offend in any thing contrary to this act; the justices of assize, justices of oyer and terminer, justices of the peace in every shire, liberty, or franchise within this realm, sheriffs in their tourns, and stewards in their leets, may inquire, hear, and determine the said offences of the said hostlers and innholders, who shall be fined, for the first offence, according to the quantity of the offence; and for the second offence shall be imprisoned for one month; and for the third shall stand upon the pillory, &c."

#### *Of keeping a Bawdy-house.*

2 Rol. 39, 79.  
83.

The offence of keeping a bawdy-house being of so gross a nature, and there being also so few questions relating to it worth considering,

considering, I shall pass it over with these following observations:

FIRST, That it comes under the cognizance of the temporal law as a common nuisance, not only in respect of its endangering the public peace, by drawing together dissolute and debauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes, by such an open profession of lewdness.

SECONDLY, That a *feme covert* is punishable for this offence (1) as much as if she were sole, as more fully hath been shewn, chapter the first, section 12.

THIRDLY, That a lodger who keeps only a single room for the use of bawdry, is indictable for keeping a bawdy-house; but that the bare solicitation of chastity is not indictable.

FOURTHLY, That offenders of this kind are punishable not only with fine and imprisonment, but also with such infamous punishment as to the court in discretion shall seem proper.

#### *Of keeping a Disorderly House.*

† As to the offence of keeping an unlicensed house, it is cited by 25 Geo. 2. c. 36. made perpetual by 28 Geo. 2. c. 19. "That whereas the multitude of places of entertainment for the lower sort of people is another great cause of thefts and robberies, as they are thereby tempted to spend their small substance in riotous pleasures, and in consequence are put on unlawful methods of supplying their wants, and renewing their pleasures;" in order, therefore, to prevent the said temptation to thefts and robberies, and to correct as far as may be the habit of idleness, which is become too general over the whole kingdom, and is productive of much mischief and inconvenience, it is enacted, "That from and after the 1st day of December, 1752, any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind, in the cities of London and Westminster, or within twenty miles thereof, without a license had for that purpose, from the last preceding Michaelmas quarter-sessions of the peace, to be holden for the county, city, riding, liberty, or division in which such house, room, garden, or other place is situate (who are hereby authorized and empowered to grant such licenses as they in their discretion shall think proper), signified under the hands and seals of four or more of the justices there assembled, shall be deemed a disorderly house or place: and every such license shall be signed and sealed by the said justices in open court, and afterwards be publicly read by the clerk of the peace, together with the names of the justices subscribing the same; and no such license shall be granted at any adjourned sessions; nor shall any fee or reward be taken for any such license. And it shall and may be lawful to and for any constable, or other person, being thereunto authorized, by warrant under the

4 Blac. Com.  
29. 64. 167.  
3 Burn, 95.  
2 Ecc. Law.  
Kitchen, 11.  
3 Inst. 205.  
Salk. 382.  
2 Ld. Ray. 197.  
Dalt. p. 262.  
Popham, 208.  
1 Sid. 168. 410.  
2 Burr. 1232.  
Salk. 384.  
10 Mod. 63.  
336.

Unlicensed  
places of enter-  
tainment deem-  
ed disorderly  
houses.

Constables may  
seize persons.

(1) Therefore she may have an action for saying that she keeps a bawdy-house. Sayer, 33.

Person keeping  
the same forfeit  
£100.

“ hand and seal of one or more of his majesty’s justices of the peace of the county, city, riding, division, or liberty where such house or place shall be situate, to enter such house or place, and to seize every person who shall be found therein, in order that they may be dealt with according to law; and every person keeping such house, room, garden, or other place, without such license as aforesaid, shall forfeit the sum of one hundred pounds to such person as will sue for the same, and be otherwise punishable as the law directs in cases of disorderly houses.”

Licensed places  
to have an in-  
scription over  
them, and not  
to be opened  
before five in  
the evening.

† Sect. 2. But by 25 Geo. 2. c. 36. s. 2. it is provided, “ That in order to give public notice what places are licensed pursuant to this act, there shall be affixed and kept up in some notorious place over the door or entrance of every such house, room, garden, or other place kept for any of the said purposes, and so licensed as aforesaid, an inscription in large capital letters, in the words following, *viz.* LICENSED PURSUANT TO ACT OF PARLIAMENT OF THE TWENTY-FIFTH OF KING GEORGE THE SECOND; and that no such house, room, garden, or other place kept for any of the said purposes, although licensed as aforesaid, shall be open for any of the said purposes before the hour of five in the afternoon; and that the affixing and keeping up of such inscription as aforesaid, and the said limitation or restriction in point of time, shall be inserted in, and made conditions of, every such license; and in case of any breach of either of the said conditions, such license shall be forfeited, and shall be revoked by the justices of peace in their next general or quarter-sessions, and shall not be renewed; nor shall any new license be granted to the same person or persons, or any other person on his or their or any of their behalf, or for their use or benefit, directly or indirectly, for keeping any such house, room, garden, or other place, for any of the purposes aforesaid.”

On breach of  
conditions li-  
censed revoked.

Places except-  
ed.

† Sect. 3. By 25 Geo. 2. c. 36. s. 3. it is also provided, “ That nothing in this act contained shall extend, or be construed to extend, to the theatres royal in Drury-lane and Covent-garden, or the theatre, commonly called the King’s Theatre, in the Hay-market, or any of them; nor to such performances and public entertainments as are or shall be lawfully exercised and carried on under or by virtue of letters patent, or license of the crown, or the license of the lord chamberlain of his majesty’s household; any thing herein contained notwithstanding.”

Constable’s  
duty upon no-  
tice of persons  
keeping a  
bawdy-house,  
&c.

† Sect. 4. And by 25 Geo. 2. c. 36. s. 4. in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses, or other disorderly houses, it is enacted, “ That if any two inhabitants of any parish or place, paying scot, and bearing lot therein, do give notice in writing to any constable (or other peace-officer of the like nature, where there is no constable) of such parish or place, of any person keeping a bawdy-house, gaming-house, or any other disorderly house, in such parish or place, the constable, or such officer as aforesaid, so receiving such notice, shall forthwith go with such inhabitants

“ to

“ to one of his majesty’s justices of the peace of the county, city, riding, division, or liberty in which such parish or place does lie; and shall, upon such inhabitants making oath before such justice, that they do believe the contents of such notice to be true, and entering into a recognizance in the penal sum of twenty pounds each, to give or produce material evidence against such person for such offence, enter into a recognizance in the penal sum of thirty pounds, to prosecute with effect such person for such offence at the next general or quarter-session of the peace, or at the next assizes to be holden for the county in which such parish or place does lie, as to the said justice shall seem meet; and such constable, or other officer, shall be allowed all the reasonable expenses of such prosecution, to be ascertained by any two justices of the peace of the county, city, riding, division, or liberty where the offence shall have been committed, and shall be paid the same by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of ten pounds to each of such inhabitants; and in case such overseer shall neglect or refuse to pay to such constable, or other officer, such expenses of the prosecution as aforesaid, or shall neglect or refuse to pay upon demand the said sums of ten pounds and ten pounds, such overseers, and each of them, shall forfeit to the person entitled to the same, double the sum so refused or neglected to be paid.”

The charges of prosecution, and £10 on-conviction to each of the two inhabitants, to be paid by the overseers.

† Sect. 5. By 25 Geo. 3. c. 36. s. 6. it is further enacted, “ That upon such constable, or other officer, entering into such recognizance to prosecute as aforesaid, the said justice of the peace shall forthwith make out his warrant to bring the person so accused of keeping a bawdy-house, gaming-house, or other disorderly house, before him, and shall bind him or her over to appear at such general or quarter-session or assizes, there to answer to such bill of indictment as shall be found against him or her for such offence; and such justice shall and may, if in his discretion he thinks fit, likewise demand and take security for such person’s good behaviour in the mean time, and until such indictment shall be found, heard, and determined, or be returned by the grand jury not to be a true bill.”

Persons keeping such bawdy-house, &c. to be bound over.

† Sect. 6. And by 25 Geo. 2. c. 36. s. 7. “ In case such constable shall neglect or refuse, upon such notice, to go before any justice of the peace, or to enter into such recognizance, or shall be wilfully negligent in carrying on the said prosecution, he shall, for every such offence, forfeit the sum of twenty pounds to each of such inhabitants so giving notice as aforesaid.”

Constable neglecting his duty forfeits £20.

† Sect. 7. And by 25 Geo. 2. c. 36. s. 8. it is recited, “ That whereas, by reason of the many subtle and crafty contrivances of persons keeping bawdy-houses, gaming-houses, or other disorderly houses, it is difficult to prove who is the real owner or keeper thereof, by which means many notorious offenders have escaped punishment;” and enacted, “ That any person who shall at any time hereafter appear, act, or behave him or herself as  
“ master.

Who shall be deemed keeper of such bawdy-house, &c.



“master or mistress, or as the person having the care, government, or management of any bawdy-house, gaming-house, or other disorderly house, shall be deemed and taken to be the keeper thereof, and shall be liable to be prosecuted and punished as such, notwithstanding he or she shall not in fact be the real owner or keeper thereof.”

Evidence may  
be given by in-  
habitant, &c.

† Sect. 8. But by 25 Geo. 2. c. 36. s. 9. it is provided, “That upon any such prosecution against any person for keeping a bawdy-house, gaming-house, or other disorderly house, any person may give evidence against the defendant, or on behalf of the defendant, in such prosecution, notwithstanding his or her being an inhabitant or parishioner of the said parish or place, or having entered into such recognizance as aforesaid.”

No *certiorari*.

† Sect. 9. And by 25 Geo. 2. c. 36. s. 10. it is further enacted, “That no indictment which shall at any time after the said first day of June be preferred against any person for keeping a bawdy-house, gaming-house, or other disorderly house, shall be removed by any writ of *certiorari* into any other court; but such indictment shall be heard, tried, and finally determined, at the same general or quarter-session or assizes, where such indictment shall have been preferred (unless the court shall think proper, upon cause shewn, to adjourn the same), any such writ or allowance thereof notwithstanding.”

### 5. Gaming.

The vice of gaming may be ranked amongst the offences against the political economy of the state, inasmuch as it leads to fraud and thieving among the lower classes, and to ruin with the opulent. Mr. J. Blackstone says, “It is a kind of tacit confession that the company engaged therein do exceed the bounds of their respective fortunes; and therefore they cast lots to determine upon whom the ruin shall at present fall, that the rest may be saved a little longer.” This is quaintly imagined, but it is not founded in truth, since it is notorious that the love of gaming is frequently predominant with those men who have nothing to gain from success, and every thing to lose from defeat. It is rather to be sought for in the structure of human nature which finds happiness in the strong excitement of the passions—war, hunting, political intrigue, gaming, all derive their pleasure from the same source. When minds of ardent temperament are not directed to business, but are left to seek employment only in pleasures, they find the greatest in those pursuits which most strongly agitate the passions, particularly the passions of expectation, hope, and fear. This may account for the conduct of those who, by the possession of splendid wealth, have already in their power the means of obtaining all that fortune can supply, and yet many of whom are addicted to the vice of gaming, even to the putting in hazard of all their possessions: it is also doubtless, that others follow in the same track not excited by the same motives, but by one equally powerful in the human mind, though more cool, steady, and certain in its operations, namely—avarice; and whose object is to despoil their unguarded and impassioned opponents.

opponents. Others there are also, who, without strong passions, are carried by the folly of fashion into the same vortex. But whatever may be the several motives which hurry men to this baneful evil, certain it is, that it is a vice deep rooted in the human mind: it has existed in all ages, and in all countries—savage and civilized: it has infected all ranks; the accomplished scholar and the untaught savage have equally been its victims.—But this is rather matter for the moralist than the lawyer.

The people of England seem, by the common law, to have enjoyed an unrestrained license in all their games and sports. Their pastimes seemed to be no further restrained by the law than to prevent them from degenerating into riotous assemblies, in breach of the peace.<sup>(1)</sup> It was not until the 33 H. 8. that a law was made against playing cards and dice by the lower orders. Indeed in the 17 Edw. 4. a severe law was made against playing at cloish, kaile, halfe bowle, handyn, and hand-out, queke board; but this law appears to have had in view the preservation of the public peace; Edward had just disbanded his army on his return from his expedition against France, and they were committing many violent depredations all over the kingdom; by forbidding these games, it prevented, to a certain extent, their congregating together to the danger of the public tranquillity.

Since that period several statutes have passed upon the subject of gaming, and the offences in this matter may be classed as follows:

Keeping a common gaming-house.

Fraudulent play.

Playing for excessive sums.

Playing at prohibited games.

Stock-jobbing.

Illegal horse-racing.

*The Offence of keeping and frequenting a Common Gaming-house.*

† Sect. 1. By 23 Hen. 8. c. 9. s. 11. it is enacted, "That no manner of person or persons, of what degree, quality, or condition soever he or they be, from the Feast of the Nativity of St. John the Baptist now next coming, by himself, factor, deputy, servant, or other person, shall for his or their gain, lucre, or living, keep, have, hold, occupy, exercise, or maintain, any common

The penalty for maintenance of a house for unlawful games.

<sup>(1)</sup> An assembly of three persons or more, which is not to the terror of the people, nor to do some act with force and violence against the peace, is not unlawful. The watch in London upon midsummer's night is lawful; and so be such like in other cities and towns. Assemblies be lawful that be used upon May-day to fetch in May-boughs or flowers; and so be assemblies at church ales, Whitsun and Mid-summer ales. Assemblies at the fetching home, setting up, or dancing round a May-pole, and assemblies at the baiting of a bull or bear,

and at the mowing or making a doll or revel mead; and assemblies of minstrels and their fellows at certain places and times of the year, allowed by ancient custom, are also lawful; and assemblies to play at cards, tables, bowles, clash, bucklers, wasters, half-sword, tennis, quoits, cailes, or such other games, be likewise, by the common law, tolerable: and assemblies to run at quinn-ball, sand-bag, base, feet-ball, stool-ball, hand-ball and such like disports, be likewise lawful. (Pulton, *de Pace R. et R.* tit. Riot, p. 261.)

“ common house, alley, or place of bowling, coyting, cloysh-cayls, half-bowl, tennis, dicing-table, or carding, or any other manner of game prohibited by any estatute heretofore made, or any unlawful new game now invented or made or any other new unlawful game, hereafter to be invented, found, had, or made, upon pain to forfeit and pay for every day keeping, having, or maintaining, or suffering any such game to be had, kept, executed, played, or maintained within any such house, garden, alley, or other place, contrary to the form and effect of this estatute, forty shillings.”

The penalty for resorting to a house of unlawful games.

† *Sect. 2.* By 33 Hen. 8. c. 9. s. 12. “ And also every person using and haunting any of the said houses and plays, and there playing, to forfeit for every time so doing, six shillings eight-pence.”

Magistrates may repress unlawful games, and punish offenders.

† *Sect. 3.* By 33 Hen. 8. c. 9. s. 14. it is further enacted, That it shall be lawful to all and every the justices of peace in every shire, mayors, sheriffs, bailiffs, and other head officers within every city, town, and borough within this realm, from time to time, as well within liberties as without, as need and case shall require, to come, enter, and resort into, all and every houses, places, and alleys where such games shall be suspected to be holden, exercised, used, or occupied, contrary to the form of this estatute : and as well the keepers of the same, as also the persons there haunting, resorting, and playing, to take, arrest, and imprison, and them so taken and arrested to keep in prison unto such time as the keepers and maintainers of the said plays and games have found sureties to the king's use, to be bound by recognizance or otherwise, no longer to use, keep, or occupy any such house, play, game, alley, or place ; and also that the persons there so found, be in like case bound by themselves, or else with sureties, by the discretions of the justices, mayors, sheriffs, bailiffs, or other head officers, no more to play, haunt, or exercise from henceforth, in, at, or to any of the said places, or at any of the said games.”

Further provisions relating hereto, 2 Geo. 2. c. 28. s. 9.

Searching of houses where unlawful games be kept.

† *Sect. 4.* By 33 Hen. 8. c. 9. s. 15. it is further enacted, “ That the mayors, sheriffs, bailiffs, constables, and other head officers, within every city, borough, and town within this realm, where any such officers shall fortune to be, as well within the franchises as without, shall make due search weekly, or at the furthest at all times hereafter once every month, in all places where any such houses, alleys, plays, or places shall be suspected to be had, kept, and maintained ; and if the said mayors, sheriffs, bailiffs, constables, and other head officers within their cities, boroughs, and towns, as well within franchises as without, do not make due search at the furthest once every month, if the case so require, according to the tenor of this act, and do not execute the same in all things according to the purport and force of the same ; that then every such mayor, sheriff, bailiff, constable, or other head officer, to pay and forfeit for every month not making such search, nor executing the same, forty shillings.”

is prohibited play at

† *Sect. 5.* By 33 Hen. 8. c. 9. s. 16. it is enacted, “ That no manner

"manner of artificer or craftsman of any handicraft or occupation, husbandman, apprentice, labourer, servant at husbandry, journeyman, or servant of artificer, mariners, fishermen, watermen, or any serving man, shall, from the said Feast of the Nativity of St. John Baptist, play at the tables, tennis, dice, cards, bowls, clash, coyting, logating, or any other unlawful game, out of Christmas, under the pain of twenty shillings to be forfeit for every time; and in Christmas to play at any of the said games in their masters' houses, or in their masters' presence; and also that no manner of persons shall at any time play at any bowl or bowls in open places out of his garden or orchard, upon the pain for every time so offending to forfeit six shillings eight-pence; and that all justices of peace, mayors, bailiffs, sheriffs, and all other head officers, and every of them, finding or knowing any manner of person or persons using or exercising any unlawful games, contrary to this present statute, shall have full power and authority to commit every such offender to ward, there to remain without bail or mainprise, until such time that they so offending be bounden by obligation to the king's use, in such sums of money as by the discretions of the said justices, mayors, bailiffs, or other head officers, shall be thought reasonable, that they or any of them shall not from henceforth use such unlawful games."

unlawful games out of Christmas.  
Lutw. 153.

Playing at bowls. Certain officers may commit offenders to prison.

† Sect. 6. By 33 Hen. 8. c. 9. s. 18. it is enacted, "That where any such forfeitures shall happen to be found within the precinct of any franchise, leet, or lawday, then the lord of the same franchise, leet, or lawday, to have the one moiety thereof, and the other moiety thereof to any of the king's subjects that will sue for the same in any of the king's courts, by action, information, bill, or otherwise, in which action or suit the defendant shall not be admitted to wage his law, nor any protection nor essoin shall be allowed; and where such forfeiture shall be found out of the precinct of any franchise, leet, or lawday, that the moiety of all such forfeitures shall be to the king our sovereign lord, and the other moiety thereof to any the king's subjects that will sue for the same, by bill, plaint, action, information, or otherwise, in any of the king's courts, in which suit or action the defendant shall not be admitted to wage his law, nor any protection or essoin shall be allowed."

Within what time any suit shall be prosecuted upon this statute, and who shall have the forfeitures.

† Sect. 7. But by 33 Hen. 8. c. 9. s. 21. it is provided, "That if any person or persons have taken by lease, whether it be by word, writing, or otherwise, any house, alley, or place, wherein any such unlawful game now is, and at the time of such lease made was used, that then every such lessee shall, at the liberty of him or them to whom such lease is made, their executors, administrators or assigns, from the said Feast of the Nativity of St. John Baptist, be utterly void, except it be for breach of covenants or agreements or payment of rent due or to be due at the said Feast, or any time before, so that then at the same Feast, or within one month next after the same, the said lessee give knowledge to such lessor or lessors, their heirs and assigns, that he will no longer occupy the same, and that then it shall be lawful to the inheritor, lessor, or owner thereof,

Leases of houses where unlawful games be used.

" or to his heirs and assigns, in the same house, alley, or place.  
" to re-enter."

The servant by  
license may  
play with his  
master.

† *Sect. 8.* By 33 Hen. 8. c. 9. s. 22. it is also provided,  
" That it shall be lawful for every master to license his or their  
" servants to play at cards, dice, or tables with their said master,  
" or with any other gentleman repairing to their said master,  
" openly in his or their house, or in his or their presence, ac-  
" cording to his or their discretion; and that it shall be lawful  
" to every such servant, for every time so being commanded or  
" licensed by his said master, as is aforesaid, to play at cards,  
" dice, or tables with his said master, or other gentlemen so to  
" him repairing; any thing in this act to the contrary notwithstanding."

In what cases  
servants may  
play at dice,  
cards, tables,  
bowls, or tennis.

† *Sect. 9.* By 33 Hen. 8. c. 9. s. 23. it is also provided,  
" That it shall be lawful to every nobleman and other having  
" manors, lands, tenements, or other yearly profits, for term of  
" life in his his own right, or in his wife's right, to the yearly  
" value of an hundred pounds or above, to command, appoint,  
" or license, by his or their discretion, his or their servants,  
" or family of his or their house or houses, for to play within  
" the precinct of his or their houses, gardens, or orchards, at  
" cards, dice, tables, bowls, or tennis, as well among themselves  
" as other repairing to the same house or houses; and that  
" they so playing by commandment, appointment, or license,  
" as is aforesaid, shall not incur any danger or penalty contained  
" in this act for the same; this act or any thing therein contained  
" to the contrary thereof in any wise notwithstanding."

Certain offences  
punishable only  
at the assizes,  
quarter-sessions,  
or in a leet.  
Raym. 154.  
2 Mod. 246.

† *Sect. 10.* By 31 Eliz. c. 5. s. 7. it is enacted, " That all suits  
" to be pursued upon any statute for using any unlawful game,  
" or for not using any lawful game, shall be sued and prosecuted  
" in the general quarter-sessions of the peace, or assizes, of the  
" same county where the offence shall be committed, or other-  
" wise inquired of, heard, and determined in the assizes or gene-  
" ral quarter-sessions of the peace of the same county where  
" such offence shall be committed; or in the leet within which it  
" shall happen, and not in any wise out of the same county  
" where such offence shall happen or be committed."

33 Hen. 8. c. 9.  
against unlawful  
games, made ef-  
fectual.

† *Sect. 11.* By 2 Geo. 2. c. 28. s. 9. which recites, " That by  
the statute 33 Hen. 8. c. 9. no power is given unto the justices  
of the peace to demand and take from persons found playing con-  
trary to law, any other security than their own recognizances,  
that they or any of them shall not from thenceforth use such un-  
lawful games, unless such persons are so found playing contrary  
to law upon the view of one or more justice or justices of the  
peace:" it is further enacted, " That where it shall be proved  
upon the oath of two or more credible witnesses, before any  
justice or justices of the peace, as well as where such justice  
or justices shall find, upon his or their own view, that any per-  
son or persons have or hath used or exercised any unlawful  
game contrary to the said statute, the said justice or justices  
shall have full power and authority to commit all and every  
such offender or offenders to prison, without bail or mainprise,  
" unless

“ unless and until such offender and offenders shall enter into one  
 “ or more recognizance or recognizances, with sureties or without,  
 “ at the discretion of the said justice or justices of the peace,  
 “ that he or they respectively shall not from thenceforth play at  
 “ or use such unlawful game.”

† Sect. 12. By 18 Geo. 2. c. 34. s. 1. it is recited, “ That  
 whereas, notwithstanding the many good and wholesome laws  
 now in being now in being for preventing excessive and deceitful  
 gaming, many persons of ill fame and reputation, who have no  
 visible means of subsistence, do keep houses, rooms, and other  
 places for playing, and do permit persons therein to play at  
 cards, dice, and other devices, for large sums of money, by  
 means whereof divers young and unwary persons, and others, are  
 drawn in to lose the greatest part, and sometimes all their sub-  
 stance; and it frequently happens they are reduced to the ut-  
 most necessities, and betake themselves to the most wicked  
 courses, which end in their utter ruin: and whereas a certain  
 pernicious game called roulette, or roly-poly, is daily practised,  
 and the laws now in being have, by experience, been found in-  
 effectual to put a stop to such pernicious practices:” and there-  
 fore enacted, “ That no person or persons, of what condition  
 “ soever, shall keep any house, room, or place for playing, or  
 “ permit or suffer any person or persons whatsoever, within any  
 “ such house, room, or place, to play at the said game of roulette,  
 “ otherwise roly-poly, or at any other game, with cards or dice,  
 “ already prohibited by the laws of this realm; and in case any  
 “ person or persons whatsoever shall keep any such house, room,  
 “ or place for playing, or permit or suffer any person or persons  
 “ as aforesaid to play at the said game of roulette, otherwise roly-  
 “ poly, or at any other game, with cards or dice already prohi-  
 “ bited by law, such person or persons so offending shall incur  
 “ the pains and penalties, and be liable to such prosecution as  
 “ is directed in and by the statute 12 Geo. 2. c. 28.” (a)

No person shall  
 keep a place for  
 playing roly-  
 poly, or other  
 game with cards  
 or dice.

(a) viz. Penalty  
 of 200*l.* vide  
 post.

† Sect. 13. By 18 Geo. 2. c. 34. s. 7. it is enacted, “ That no  
 “ privilege of parliament shall be allowed to any person or per-  
 “ sons whatsoever against whom any prosecution or proceedings  
 “ shall be commenced or had, for keeping of any public or com-  
 “ mon gaming-house, or any house, room, or place for playing  
 “ at any game or games prohibited by this or any other act  
 “ now in being against excessive or deceitful gaming, any law,  
 “ usage, or custom to the contrary in any wise notwithstanding.”

No privilege of  
 parliament, &c.

† Sect. 14. It is said, that the above statutes do not extend to  
 persons who occasionally game in a tavern, or in an inn, nor to  
 persons who play at bowls in a skittle-ground for their recreation,  
 or the like, if the house or place be not kept for the known,  
 avowed, and common purposes of gaming. Dalton, c. 46.

† Sect. 15. And a conviction on 38 Hen. 8. c. 9. for playing at  
 bowls and pins called bulrushing, was quashed, because the infor-  
 mation did not allege that the playing was not in one of the de-  
 fendant's own orchards, for it is only unlawful *sub modo*. Rex v. Clarke,  
 Cowp. 35.

† Sect. 16. But it seems, that the keeping of a cockpit is not  
 only 3 Keb. 510. Rex v. Howell,

only an indictable offence at common law, but is considered as a gaming-house within the statute 33 Hen. 8. c. 9. and therefore on a conviction on an indictment at common law, the court will measure the fine by inflicting forty shillings for each day, according to the number of days such cockpit was kept open.

Rex v. Dixon  
and his wife,  
10 Mod. 335.

† Sect. 17. It seems also, that an indictment for keeping a common gaming-house may be found against both husband and wife; for it is not the property or ownership of the house that is in question, but the criminal management of it, in which the wife may probably have as great, nay a greater share than the husband.

Rex v. Clarke,  
Cowp. 36.

†. Sect. 18. It seems also, that an information stating the defendant to be a labourer, and the offence to have been committed on such a day in the month of August, &c. is sufficient to maintain a conviction on 33 Hen. 8. c. 9. s. 16. for it is apparent upon the face of the record that it was out of Christmas.

Rex v. Clarke,  
Cowp. 86.

+ Sect. 19. But it has been decided, that a person playing at bowls contrary to this statute could be punished as a disorderly person under the statute 17 Geo. 2. c. 5. s. 2. while that statute was in force.

### *The Offence of Fraudulent Gaming.*

5 Mod. 1. 4.  
35.  
33 H. 8. c. 9.  
2 & 3 P. & M.  
c. 9.  
See 2 Burr.  
1080.

Deceits and  
cousenages in  
gaming.  
Vin. V. 14.—1.  
&c.

18 Geo. 2. c.  
34.  
See Cowp. 282.  
See 9 Ann. c. 14.

† Sect. 1. By 16 Car. 2. c. 7. it is recited, "That whereas all lawful games and exercises should not be otherwise used than as innocent and moderate recreations, and not as constant trades or callings to gain a living, or make unlawful advantage thereby; and whereas by the immoderate use of them many mischiefs and inconveniences do arise, and are daily found, to the maintaining and encouraging of sundry idle, loose, and disorderly persons in their dishonest, lewd, and dissolute course of life, and to the circumventing, deceiving, cousening, and debauching of many of the younger sort both of the nobility and gentry and others, to the loss of their precious time, and the utter ruin of their estates and fortunes, and withdrawing them from noble and laudible employments and exercises:" and enacted, "That if any person or persons of any degree or quality whatsoever, at any time or times after the nine-and-twentieth day of September, 1664, do or shall, by any *fraud, shift, cousenage*, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at or with cards, dice, tables, tennis, bowls, kittles, shovel-board; or in or by cock-fightings, horse-races, dog-matches, foot-races, or other pastimes, game or games whatsoever, or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play, act, ride, or run as aforesaid, win, obtain, or acquire to him or themselves, or to any other or others, any sum or sums of money, or other valuable thing or things whatsoever; that then every person and persons so offending as aforesaid, shall *ipso facto* forfeit and lose treble the sum or value of money or other thing or things so won, gained, obtained, or acquired; the one moiety thereof to our sovereign lord the king, his heirs and successors, and the other moiety thereof unto the person or persons grieved,

"or

“ or who shall lose the money or other thing or things so gained;  
 “ so as every such loser or person grieved, in that behalf, do or  
 “ shall prosecute and sue for the same within six calendar months  
 “ next after such play; and in default of such prosecution, the  
 “ same other moiety to such person or persons as shall or will  
 “ prosecute or sue for the same within one year next after the  
 “ said six months expired; and that the said forfeitures shall or How to be sued  
for and reco-  
vered.  
 “ may be sued for or recovered by action of debt, bill, plaint, or  
 “ information, in any of his majesty's courts at Westminster,  
 “ wherein no essoin, protection, or wager of law, shall be allowed:  
 “ and that all and every such plaintiff or plaintiffs, informer or  
 “ informers, shall in every such suit and prosecution, have and re-  
 “ cover his and their treble costs against the person offending and  
 “ forfeiting as aforesaid, any law, statute, custom, or usage to the  
 “ contrary in any wise notwithstanding.”

† Sect. 2. By 9 Ann. c. 14. s. 5. it is further enacted, “ That Any person  
winning by  
fraud, &c. above  
10l. at one sit-  
ting, and con-  
victed thereof  
on indictment,  
&c. shall forfeit  
five times the  
value, be  
deemed infam-  
ous, and suffer  
as in cases of  
wilful perjury.  
 “ if any person or persons whatsoever do or shall, by any fraud  
 “ or shift, cousenage, circumvention, deceit, or unlawful device  
 “ or ill practice whatsoever, in playing at or with cards, dice, or  
 “ any the games aforesaid, or in or by bearing a share or part  
 “ in the stakes, wagers, or adventures, or in or by betting on the  
 “ sides or hands of such as do or shall play as aforesaid, win,  
 “ obtain, or acquire, to him or themselves, or to any other or  
 “ others, any sum or sums of money, or other valuable thing or  
 “ things whatsoever, or shall at any one time or sitting win of any  
 “ one or more person or persons whatsoever above the sum or  
 “ value of ten pounds; that then every person or persons so win-  
 “ ning by such ill practice as aforesaid, or winning at any one time  
 “ or sitting above the said sum or value of ten pounds, and being  
 “ convicted of any of the said offences upon an indictment or in-  
 “ formation to be exhibited against him or them for that purpose,  
 “ shall forfeit five times the value of the sum or sums of money  
 “ or other thing so won as aforesaid; and, in case of such ill  
 “ practice as aforesaid, shall be deemed infamous, and suffer such  
 “ corporal punishment as in cases of wilful perjury; and such  
 “ penalty to be recovered by such person or persons as shall sue  
 “ for the same by such action as aforesaid.”

† Sect. 3. By 9 Ann. c. 14. s. 6. after reciting, “ That divers  
 lewd and dissolute persons live at great expenses, having no vi-  
 sible estate, profession, or calling, to maintain themselves, but  
 support those expenses by gaming only,” it is further enacted,  
 “ That it shall and may be lawful for any two or more of her Two justices  
may cause per-  
sons who have  
no visible estate,  
&c. be brought  
before them, and  
they shall find  
sureties for their  
good behaviour,  
or be committed,  
 “ majesty's justices of the peace in any county, liberty, or city,  
 “ whatsoever, to cause to come or to be brought before them,  
 “ every such person or persons within their respective limits,  
 “ whom they shall have just cause to suspect to have no visible  
 “ estate, profession, or calling, to maintain themselves by, but do  
 “ for the most part support themselves by gaming; and if such  
 “ person or persons shall not make it appear to such justices, that  
 “ the principal part of his or their expenses is not maintained by  
 “ gaming, that then such justices shall require of him or them  
 “ sufficient securities for his or their good behaviour for the space  
 “ of twelve months; and in default of his or their finding such  
 “ securities,



securities, to commit him or them to the common gaol, there to remain until he or they shall find such securities as aforesaid."

Persons so finding sureties and playing for 20s. forfeit recognizance.

† *Sect. 4.* By 9 Ann. c. 14. s. 7. "If such person or persons so finding sureties as aforesaid shall, during the time for which he or they shall be so bound to the good behaviour, at any one time or sitting, play or bet for any sum or sums of money, or other thing, exceeding in the whole the sum or value of twenty shillings, that then such playing shall be deemed or taken to be a breach of his or their behaviour, and a forfeiture of the recognizance given for the same."

Assaulting, &c. on account of money won at play, to forfeit all his goods, and be imprisoned two years.

† *Sect. 5.* And by 9 Ann. c. 14. s. 8. "For the preventing of such quarrels as shall and may happen upon the account of gaming, it is enacted, That in case any person or persons whatsoever shall assault and beat, or shall challenge or provoke to fight, any other person or persons whatsoever, upon account of any money won by gaming, playing or betting at any of the games aforesaid, such person or persons assaulting and beating, or challenging or provoking to fight, such other person or persons upon the account aforesaid, shall, being thereof convicted upon an indictment or information to be exhibited against him or them for that purpose, forfeit to her majesty, her heirs and successors, all his goods, chattels, and personal estate whatsoever, and shall also suffer imprisonment, without bail or mainprize, in the common gaol of the county where such conviction shall be had, during the term of two years." (1)

This act shall not extend to prevent gaming in any of the queen's palaces during her residence there, &c.

† *Sect. 6.* But by 9 Ann. c. 14. s. 9. it is provided, "That nothing in this act contained shall extend to prevent or hinder any person or persons from gaming or playing at any of the games aforesaid within any of her majesty's palaces of St. James or Whitehall, during such time as her majesty, her heirs and successors, shall be actually resident at either of the said two palaces; or in any other royal palaces, where her majesty, her heirs or successors, shall be actually resident, during the time of such actual residence; so as such playing be not in any house, lodging, or other part of any of the said palaces, the freehold or inheritance whereof is or shall be out of the crown, or is or shall be in lease to any person or persons, during such time as such freehold and inheritance shall be out of the crown, or such lease shall continue, and so as such playing be for ready money only."

Court of equity, where a bill shall be filed for any sum won, may enforce their decree as in other causes.

† *Sect. 7.* By 18 Geo. 2. c. 34. s. 3. which recites 9 Ann. c. 14. it is enacted, "That in case any bill or bills shall be brought, exhibited, and filed, in any court of equity, against any person or persons, for any sum or sums of money won by any person or persons, it shall and may be lawful for such court wherein such bill shall be brought, exhibited, and filed, to proceed and decree thereupon, and enforce such decree or decrees as shall be made in pursuance thereof, in the same manner as is practised

(1) Vide this act and decisions on it, ante, title Aggravated Assaults, p. 116.

"tied and used in other causes; upon bills and answers depending in the courts where such bill shall be so brought and exhibited."

*Excessive Gaming.*

† Sect. 1. By 16 Car. 2. c. 7. s. 3. "For the better avoiding and preventing of all excessive and immoderate playing and gaming for the time to come, it is further enacted, that if any person or persons shall play at any of the said games, or any other pastime, game, or games whatsoever (other than with and for ready money), or shall bet on the sides or hands of such as do or shall play thereat, and shall lose any sum or sums of money, or other thing or things so played for, exceeding the sum of one hundred pounds, at any one time or meeting, upon ticket or credit, or otherwise, and shall not pay down the same at the time when he or they shall so lose the same, the party and parties who loseth or shall lose the said monies, or other thing or things so played or to be played for, above the said sum of one hundred pounds, shall not in that case be bound or compelled or compellable to pay or make good the same; but the contract and contracts for the same, and for every part thereof, and all and singular judgments, statutes, recognizances, mortgages, conveyances, assurances, bonds, bills, specialities, promises, covenants, agreements, and other acts, deeds, and securities whatsoever, which shall be obtained, made, given, acknowledged, or entered into, for security or satisfaction of or for the same, or any part thereof, shall be utterly void and of none effect; and that the said person or persons, so winning the said monies or other things, shall forfeit and lose treble the value of all such sum and sums of money, or other thing or things, which he shall so win, gain, obtain, or acquire, above the said sum of one hundred pounds; the one moiety thereof to our said sovereign lord the king, his heirs and successors, and the other moiety thereof to such person or persons as shall prosecute or sue for the same within one year next after the time of such offence committed; and to be sued for by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, wherein no essoin, protection, or wager of law, shall be allowed; and that every such plaintiff or plaintiffs, informer or informers, shall, in every such suit and prosecution, have and receive his treble costs against the person and persons offending and forfeiting as aforesaid, any law, custom, or usage to the contrary notwithstanding."

Prevention of excessive and immoderate gaming.

1 Vent. 253.  
1 Lutw 180.  
2 Mod. 54.  
1 Salk. 344.  
2 Lev. 94.  
4 Mod. 409.

See Dougl.  
714, 715.

The penalty.

† Sect. 2. By 9 Ann. c. 14. it is recited, "That the laws now in force for preventing the mischiefs which may happen by gaming have not been found sufficient for that purpose; therefore, for the further preventing of all excessive and deceitful gaming, it is enacted, That all notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatsoever, given, granted, drawn, or entered into, or executed, by any person or persons whatsoever, where the whole or any part of the consideration of such conveyances or securities shall be for any money, or other valuable thing whatsoever, won by gaming or playing at

Mortgages, &c. where the consideration is for money won by gaming, or for repayment of money lent at gaming, &c. shall be void. And where such mortgages, &c. shall encumber any lands, &c. they shall de-

volve to such person as should have been intitled to them in case such grantor had been dead, &c. And all conveyances to hinder such lands from devolving, &c. shall be void.

Sec 2 Bur.

1080.

1 Wils. 220.

2 Wils. 36, 67, 309.

" at cards, dice, tables, tennis, bowls, or other game or games whatsoever, or by betting on the sides or hands of such as do game at any of the games aforesaid, or for the reimbursing or repaying any money knowingly lent or advanced for such gaming or betting as aforesaid, or lent or advanced at the time and place of such play, to any person or persons so gaming or betting as aforesaid, or that shall, during such play, so play or bet, shall be utterly void, frustrate, and of none effect, to all intents and purposes whatsoever, any statute, law, or usage to the contrary thereof in any wise notwithstanding; and that where such mortgages, securities, or other conveyances, shall be of lands, tenements, or hereditaments, or shall be such as encumber or affect the same, such mortgages, securities, or other conveyances, shall enure and be to and for the sole use and benefit of, and shall devolve upon, such person or persons as should or might have, or be entitled to, such lands, tenements, or hereditaments, in case the said grantor or grantors thereof, or the person or persons so encumbering the same, had been naturally dead, and as if such mortgages, securities, or other conveyances, had been made to such person or persons so to be entitled after the decease of the person or persons so encumbering the same; and that all grants or conveyances to be made for the preventing of such lands, tenements, or hereditaments, from coming to or devolving upon such persons or persons hereby intended to enjoy the same as aforesaid, shall be deemed fraudulent and void, and of none effect, to all intents and purposes whatsoever."

The loser of 10l. at cards, &c. may sue for the money within three months. See 4 Bur. 1018.

† Sect. 3. By 9 Ann. c. 14. s. 2. " Any person or persons whatsoever, who shall at any time or sitting, by playing at cards, dice, tables, or other game or games whatsoever, or by betting on the sides or hands of such as do play at any of the games aforesaid, lose to any one or more person or persons so playing or betting, in the whole, the sum or value of ten pounds, and shall pay or deliver the same or any part thereof, the person or persons so losing and paying or delivering the same, shall be at liberty, within three months then next, to sue for and recover the money or goods so lost and paid or delivered, or any part thereof, from the respective winner or winners thereof, with costs of suit, by action of debt founded on this act, to be prosecuted in any of her majesty's courts of record, in which actions or suits no essoin, protection, wager of law, privilege of parliament, or more than one imparlance, shall be allowed; in which action it shall be sufficient for the plaintiff to allege that the defendant or defendants are indebted to the plaintiffs, or received to the plaintiff's use, the monies so lost and paid, or converted the goods won of the plaintiff to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this statute, without setting forth the special matter: and in case the person or persons who shall lose such money or other thing as aforesaid, shall not, within the time aforesaid, really and *bonâ fide*, and without covin or collusion, sue, and with effect prosecute for the money or other thing so by him or them lost and paid or delivered as aforesaid, it shall and may be lawful to and for any person or persons, by any such action or suit

" as

and if the losers do not sue, &c. any other persons may,

“ as aforesaid, to sue for and recover the same, and treble the value thereof, with costs of suit, against such winner or winners as aforesaid; the one moiety thereof to the use of the person or persons that will sue for the same, and the other moiety to the use of the poor of the parish where the offence shall be committed.”

and recover with treble value; one moiety to the informer, the other to the poor.

† Sect. 4. By 9 Ann. c. 14. s. 3. “ For the better discovery of the monies or other things so won, and to be sued for and recovered as aforesaid, it is further enacted, That all and every the person or persons, who by virtue of this present act shall or may be liable to be sued for the same, shall be obliged and compellable to answer upon the oath such bill or bills as shall be preferred against him or them for discovering the sum or sums of money or other thing so won at play as aforesaid.”

The person sued shall answer upon oath to discover the money won.

† Sect. 5. But by 9 Ann. c. 14. s. 4. it is provided, “ That, upon the discovery and repayment of the money or other thing so to be discovered and repaid as aforesaid, the person or persons who shall so discover and repay the same as aforesaid, shall be acquitted, indemnified, and discharged from any further or other punishment, forfeiture, or penalty, which he or they may have incurred by the playing for or winning such money or other thing so discovered and repaid as aforesaid, any former or other statute, law, or usage, or any thing in this present act contained, to the contrary thereof in any wise notwithstanding.”

The person who shall so discover and repay, shall be indemnified from further punishment.

† Sect. 6. By 18 Geo. 2. c. 34. s. 8. “ If any person shall win or lose at play, or by betting, at any one time, the sum or value of ten pounds, or within the space of twenty-four hours the sum or value of twenty pounds, such person shall be liable to be indicted for such offence within six months after it is committed, either before his majesty’s justices of the king’s bench, assize, gaol-delivery, or grand sessions; and being thereof legally convicted, shall be fined five times the value of the sum so won or lost, which fine (after such charges as the court shall judge reasonable allowed to the prosecutors and evidence out of the same) shall go to the poor of the parish or place where such offence shall be committed.”

Persons losing 10*l.* at one time, or 20*l.* in twenty-four hours, may be indicted;

and fined five times the value.

† Sect. 7. But by 18 Geo. 2. c. 34. s. 9. it is provided, “ That if any person so offending shall discover any other person so offending, so that such person be thereupon convicted, the person so discovering shall be discharged and indemnified from all penalties by reason of such offence, if such person so discovering hath not been before convicted thereof, and shall be admitted as an evidence to prove the same.”

Offenders discovering others discharged.

† Sect. 8. It has been determined, that a wager on a collateral matter, and not on the event of the game played at, is not within these statutes; as where two persons were playing at back-gammon, and one of them having touched a man, the other laid him a wager of a hundred pounds, that having touched it he was bound by the law of the game to play the man. But no action will

Pope v. St. Ledger, Salk. 344.

Brown v. Leeson, 2 H. Bl. Rep. 43.

will lie on a wager respecting the mode of playing an illegal game, as hazard.

*Lyntal v. Longbotham*,  
2 Wils. 36.

† *Sect. 9.* So also where A. betted B. that one C. would not run four miles in twenty-one minutes, it was adjudged not within the statutes, because as C. was not playing at such game, it was not a wager within the act; for C. might be running for his amusement, and not to win any bet.

2 Wils. 36.

† *Sect. 10.* It is however decided, that a foot-race, whether the race be upon a given distance or against a certain time, is a game prohibited by 9 Ann. c. 14.

*Brown v. Beckley*,  
Cowp. 282.

† *Sect. 11.* So also a wager, that A. did not find within such a time a man, who should carry on foot twenty-four stone weight ten miles in fifteen hours, has been adjudged a wager within the statute.

*Jefferies v. Walter*,  
1 Wils. 220.

† *Sect. 12.* It seems also, that cricket is a game within the statute 9 Ann. c. 14. s. 1.

*Blaxton v. Pye*,  
2 Wils. 309.  
*Goodburn v. Marley*,  
2 Stra. 1159.

† *Sect. 13.* So also it has been adjudged, that laying above ten pounds upon a horse-race is an illegal bet within the statutes of 16 Car. 2. c. 7. and 9 Ann. c. 14. for that these statutes ought to be extended to all sports as well as games, in order to prevent excessive betting.

*Clayton v. Jennings*,  
Black. 706.

† *Sect. 14.* So also it is determined, that a wager of ten pounds to five pounds upon a horse-race is within the act, although the race was for a legal plate; for although five pounds are less than the sum mentioned in the statute, yet as the loser of the ten pounds would not be obliged to pay, the wager is bad for want of mutual risk.

*Bones v. Booth*,  
2 Bl. Rep. 1226.

† *Sect. 15.* It hath been determined, that if two persons play at cards from Monday evening to Tuesday evening, without any interruption except for an hour or two at dinner, and one of them has then won a balance of seventeen guineas, this is won at one sitting within the statute.

*Noel v. Reynolds*,  
2 Show. 185.

*Sect. 16.* So also it is said, that if above an hundred pounds be lost upon tick at one sitting, although to several persons, it cannot be recovered.

*Anonymous*,  
8 Mod. 187.

† *Sect. 17.* It seems, that if a loser prefer an indictment against a winner on the statute 9 Ann. c. 14. and the grand jury find the bill, the court will not permit an information to be filed against the defendant, although the indictment was quashed, and, of course, the defendant never tried upon it; for the grand jury may find another bill for the same offence.

*Rex v. Lookup*,  
2 Stra. 1048.

† *Sect. 18.* It is also settled, that if a defendant be convicted on an information on the statute 9 Ann. c. 14. the court can only give judgment *quod convictus est*, and cannot set a fine on the offender to five times the value, but that an action must be brought on the judgment to recover the penalty.

† *Sect.*

† *Sect. 19.* It is settled, that if one person lend another person money for the very purpose of gaming with, yet if he take no written security for it, the lender may recover it back by an action of *assumpsit* on the implied contract; for the statute only makes securities void, and is silent respecting contracts; and perhaps the legislature thought that a very extensive and prejudicial credit was not likely to be given where no written security could be legally taken.

Barjean v.  
Walmsley,  
2 Swa. 1249.

† *Sect. 20.* So also money paid by A. at the request of B. for the amount of a bet which B. had lost to another person, may be recovered on the implied contract.

2 Wils. 309.

† *Sect. 21.* And it has been decided, that where a security, as for instance a bill of exchange, is given for £600. and it appears that part of it was for money won at play, and part for money lent at the time and place of play, the contract is divisible, and the holder may recover for so much as was lent at the time and place of play.

Robinson v.  
Bland,  
2 Burr. 1078.

† *Sect. 22.* But a security of any kind given for money won at play is absolutely void, even in the hands of an innocent indorser, who has *bonâ fide* paid value for it, and had no notice that it was originally given on an illegal consideration; and the court of chancery may order the void security to be given up and cancelled, and any money which may have been paid upon it to be refunded.

8 Mod. 57.  
2 Mod. 279.  
Dougk. 743.

Rawdon v.  
Shadwell,  
2 Stra. 1249.

### *The Offence of Gaming, &c. by playing at Prohibited Games.*

† *Sect. 1.* By 10 and 11 Will. 3. c. 17. s. 1. it is recited, "That whereas several evil-disposed persons, for divers years last past, have set up so many mischievous and unlawful games, called lotteries, not only in the cities of London and Westminster, and in the suburbs thereof, and places adjoining, but in most of the eminent towns and places in England, and in the dominion of Wales, and have thereby most unjustly and fraudulently got to themselves great sums of money from the children and servants of several gentlemen, traders and merchants, and from other unwary persons, to the utter ruin and impoverishment of many families, and to the reproach of the English laws and government, by colour of several patents or grants under the great seal of England for the said lotteries, or some of them; which said grants or patents are against the common good, trade, welfare, and peace, of his majesty's kingdom:" for remedy whereof it is enacted, "That all such lotteries, and all other lotteries, are common and public nuisances, and that all grants, patents, and licenses, for such lotteries, or any other lotteries, are void and against law."

Lotteries declared public nuisances, and all grants thereof void.

† *Sect. 2.* By 10 and 11 Will. 3. c. 17. s. 2. it is further enacted, "That no person or persons whatsoever shall publicly or privately exercise, keep open, shew, or expose to be played at, drawn at, or thrown at, or shall draw, play, or throw at any such

From 29 Dec. 1699, no person to keep open such lottery, &c. Penalty on offender.

“such lottery, or any other lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatsoever; and that every person or persons that shall exercise, expose, open, or shew to be played, thrown, or drawn at, any such lottery, play, or device, or other lottery, shall forfeit for every such offence the sum of five hundred pounds, to be recovered by information, bill, plaint, or action at law, in any of his majesty's courts at Westminster, wherein no essoin, wager of law, nor any more than one imparlance, shall be allowed; one third part thereof to the use of his majesty, his heirs and successors, one other third part thereof to the use of the poor of the parish where such offence shall be committed, and the other third part thereof, together with double costs, to the party that shall inform and sue for the same; and the said parties so offending shall likewise be prosecuted as common rogues, according to the statutes in that case made and provided.”

Pena  
ing at such lot-  
teries. 12 Geo. 2.  
c. 28.

† Sect. 3. By 10 and 11 Will. 3. c. 17. s. 3. it is further enacted, “That every person or persons that shall play, throw, or draw at any such lottery, play, or device, or other lotteries, shall forfeit for every such offence the sum of twenty pounds, to be recovered by information, bill, plaint, or action at law, in any of his majesty's courts at Westminster, wherein no essoin, wager of law, nor any more than one imparlance, shall be allowed; one third part thereof to the use of his majesty, his heirs, and successors, one other third part thereof to the use of the poor of the parish where such offence shall be committed, and the other third part thereof, together with double costs, to the party that shall inform and sue for the same.”

Persons setting  
up such lotteries  
forfeit 100l.

† Sect. 4. By 9 Ann. c. 6. s. 56. it is further enacted, “That the justices of the peace, and all mayors, bailiffs, head officers, constables, and other her majesty's civil officers, within their respective jurisdictions, are hereby empowered and required to use their utmost endeavours to prevent the drawing of any such unlawful lottery, heretofore or hereafter to be set up, by all lawful ways and means; and that every person who shall set up, or shall, by writing or printing, publish the setting up any such unlawful lottery, with intent to have such lottery drawn, shall forfeit for every such offence one hundred pounds, to be recovered by information, bill, plaint, or action at law, in any of her majesty's courts at Westminster, wherein no essoin, wager of law, nor any more than one imparlance, shall be allowed; one third part thereof to the use of her majesty, her heirs, and successors; one other third part thereof to the use of the poor of the parish where such offence shall be committed; and the other third part thereof, together with full costs, to the party who shall inform and sue for the same.”

† Sect. 5. By 10 Ann. c. 26. s. 109. it is enacted, “That every person or persons who shall erect, set up, or keep any office or place, for making insurances on marriages, births, christenings, or service, or any of them, or any other office or place, under the denomination of sales of gloves, of fans, of cards

“ cards, of numbers, of the queen's picture, for the improvement  
 “ of small sums of money, or the like offices or places, under the  
 “ pretence of improving small sums of money, shall forfeit for  
 “ every such offence the sum of five hundred pounds, to be reco-  
 “ vered, with costs of suit, by action of debt, bill, plaint, or in-  
 “ formation, in any of her majesty's courts aforesaid, wherein no  
 “ essoin, protection, wager of law, nor any more than one impar-  
 “ lance, shall be allowed; one third part thereof to the use of  
 “ her majesty, her heirs, and successors, one other third part  
 “ thereof to the use of the poor of the parish of the place where  
 “ the offence shall be committed, and the other third part thereof,  
 “ together with full costs of suit, to the person or persons who shall  
 “ inform or sue for the same; and every printer or other person  
 “ who shall, by writing or printing, publish the setting up or keep-  
 “ ing any such office or place under any the denominations afore-  
 “ said, or like denominations, for the improvement of small sums  
 “ of money, shall, for every such offence, forfeit the sum of one  
 “ hundred pounds, to be recovered and distributed in such man-  
 “ ner as the penalty last-mentioned is to be recovered and distri-  
 “ buted; and every person or persons who in any office or place,  
 “ erected or set up for making insurances on marriages, births,  
 “ christenings, or service, or under any other the denominations  
 “ aforesaid, or any like denominations, for the improvement of  
 “ small sums, shall make or suffer to be made therein any new  
 “ insurances or contracts for new insurances on marriages, births,  
 “ christenings, or service, or receive any payments into any the  
 “ offices or places aforesaid, for improvement of small sums of  
 “ money, shall forfeit, for every such offence, the sum of one  
 “ hundred pounds, to be recovered and distributed in like man-  
 “ ner.”

† Sect. 6. By 8 Geo. 1. c. 2. s. 36. it is enacted, “ That all  
 “ and every person or persons who shall erect, set up, continue,  
 “ or keep, or shall cause or procure to be erected, set up, con-  
 “ tinued, or kept, any office or place under the denomination of  
 “ sales of houses, lands, advowsons, presentations to livings, plate,  
 “ jewels, ships, goods, or other things for the improvement of  
 “ small sums of money; or shall sell or expose to sale any houses,  
 “ lands, advowsons, presentations to livings, plate, jewels, ships,  
 “ goods, or other things by way of lottery, or by lots, tickets, num-  
 “ bers, or figures; or shall make, print, advertise, or publish, or  
 “ cause to be made, printed, advertised, or published, proposals  
 “ or schemes for advancing small sums of money by several per-  
 “ sons amounting in the whole to large sums, to be divided among  
 “ them by the chances of the prizes in some public lottery or  
 “ lotteries, established or allowed by act of parliament; or shall de-  
 “ liver out, or cause or procure to be delivered out, tickets to the  
 “ persons advancing such sums, to entitle them to a share of the  
 “ money so advanced according to such proposals or schemes;  
 “ or shall make, print, or publish, or cause to be made, printed,  
 “ or published, any proposal or scheme of the like kind or nature,  
 “ under any denomination, name, or title whatsoever; and shall  
 “ be thereof convicted upon the oath or oaths of one or more cre-  
 “ dible witness or witnesses, by two or more justices of the peace  
 “ for

Persons who shall erect offices for sale, &c. by way of lottery, &c. shall forfeit 500*l.* one third to the crown, another to the informer, and the other to the poor where, &c.



Persons ag-  
grieved may ap-  
peal to quarter-  
sessions.

“ for the county, division, or liberty, where such offence shall be  
“ committed, or the offender shall be found (which oath such jus-  
“ tices of the peace are hereby empowered and required to ad-  
“ minister), the person so convicted shall, for every such offence,  
“ over and above any former penalties inflicted by any former  
“ act or acts of parliament made against any private or unlawful  
“ lotteries, forfeit the sum of five hundred pounds; one third part  
“ thereof to his majesty, his heirs, and successors, one other third  
“ part thereof to the informer, and the remaining third part  
“ thereof to the poor of the parish where such offence shall  
“ be committed; the same to be levied by distress and sale of  
“ the offender's goods, by warrant under the hands and seals of  
“ such justices before whom such offender shall be convicted as  
“ aforesaid; and shall also, for every such offence, by such jus-  
“ tices be committed to the county gaol, there to remain without  
“ bail or mainprise for the space of one whole year, and from  
“ thence till the said sum of five hundred pounds, so forfeited as  
“ aforesaid, shall be fully paid and satisfied; provided nevertheless,  
“ that any person who shall think himself or herself aggrieved by  
“ the judgment or determination of two or more such justices, in any  
“ the cases aforesaid, shall have liberty to appeal to the next quar-  
“ ter-sessions to be held for the county, city, or place, where such  
“ judgment or determination shall be made or given; and that the  
“ judgment to be given by the justices at the said next quarter-  
“ sessions shall be final.”

Persons contri-  
buting to sales,  
&c. to forfeit  
double the sum  
contributed, one  
moiety to the  
crown, the other  
to the informer.

† Sect. 7. By Geo. 1. c. 2. s. 37. it is further enacted, “ That  
“ all and every person or persons who, after the time aforesaid,  
“ shall be adventurer or adventurers in, or shall pay any money  
“ or other consideration, or any ways contribute unto, or upon  
“ the account of any such sales, lotteries, proposals, or schemes  
“ aforesaid, shall forfeit for every such offence double the sum  
“ paid or contributed, to be recovered with costs of suit by action  
“ of debt, bill, plaint, or information, in any of his majesty's courts  
“ of record at Westminster, wherein no essoin, protection, wager  
“ of law, nor any more than one imparlance, shall be allowed;  
“ one moiety thereof to his majesty, his heirs, and successors, the  
“ other moiety thereof to the person or persons who shall in-  
“ form or sue for the same.”

Clause to pre-  
vent foreign lot-  
teries being car-  
ried on in this  
kingdom.

† Sect. 8. By 9 Geo. 1. c. 19. s. 4. it is further enacted,  
“ That if any person or persons shall, by virtue or colour of any  
“ grant or authority from any foreign prince, state, or government  
“ whatsoever, erect, set up, continue, or keep, or shall cause or  
“ procure to be erected, set up, continued, or kept, any lottery  
“ or undertaking in the nature of a lottery, under any denomina-  
“ tion whatsoever, or shall make, print, or publish, or cause to  
“ be made, printed, or published, any proposal or scheme for any  
“ such lottery or undertaking, or shall within this kingdom sell  
“ or dispose of any ticket or tickets in any foreign lottery, and  
“ shall be convicted of any the said offences, upon the oath or  
“ oaths of one or more credible witness or witnesses, by two or  
“ more justices of the peace of the county, division, or liberty  
“ where such offence shall be committed, or the offender shall  
“ be

“ be found (which oath such justices of the peace are hereby empowered and required to administer), the person so convicted shall, for every such offence (over and above any former penalties inflicted by any former act or acts of parliament made against unlawful lotteries), forfeit the sum of two hundred pounds; one third part thereof to his majesty, his heirs, and successors, one other third part thereof to the informer, and the remaining third part thereof to the poor of the parish where such offence shall be committed; the same to be levied by distress and sale of the offender’s goods, by warrant under the hands and seals of such justices before whom such offender shall be convicted as aforesaid, and shall also for every such offence by such justices be committed to the county gaol, there to remain without bail or mainprise for the space of one whole year, and from thence till the said sum of two hundred pounds, so forfeited as aforesaid, shall be fully paid and satisfied. Penalty.

† *Sect. 9.* By 9 Geo. 1. c. 19. s. 5. “ Provided nevertheless, that any person who shall think him or herself aggrieved by the judgment or determination of such justices in any the cases aforesaid, shall have liberty to appeal to the next quarter-sessions to be held for the county, city, or place, where such judgment or determination shall be made or given, and that the judgment to be given by the justices of the next quarter-sessions shall be final.” Appeal to quarter-sessions.

† *Sect. 10.* By 6 Geo. 2. c. 35. s. 29. “ If any person or persons shall sell, procure, or deliver any ticket, receipt, chance, or number, in or belonging to any foreign lottery or pretended foreign lottery, or in or belonging to any class, part, or division of such lottery or pretended lottery, or in or belonging to any undertaking whatsoever in the nature of a lottery, or shall sell, procure, or deliver any ticket, receipt, chance, or number in or belonging to any duplicate or pretended duplicate of any foreign lottery or pretended foreign lottery, or shall receive, or cause to be received, any money whatsoever for any such ticket, receipt, chance, or number, or for or in consideration of any money to be repaid, in case any ticket or tickets, number or numbers in any foreign lottery or pretended lottery, or any class, part, or division thereof, shall prove fortunate, and shall be convicted of any of the said offences, upon action of debt, bill, plaint, or information, in any of his majesty’s courts of record at Westminster (in which no essoin, privilege, protection, or wager of law, or more than one imparlance, shall be allowed), or upon the oath or oaths, or affirmation or affirmations, of one or more credible witness or witnesses, before two or more justices of the peace of the county, division, or liberty, where such offence shall be committed, or the offender shall be found (which oath or affirmation such justices of the peace are hereby empowered and required to administer or give), the person so convicted shall, for every such offence, forfeit the sum of two hundred pounds; one third part thereof to the use of his majesty, his heirs, and successors, one third part thereof to him, her, or them who shall sue for the same, or make information of the offence, 200l. penalty on persons selling or procuring chances in foreign lotteries after 24 June, 1733.

“ offence, and the remaining third part thereof to the poor of the  
 “ parish where such offence shall be committed ; the same (in case  
 “ of conviction before two justices) to be levied by distress and  
 “ sale of the offender’s goods, by warrant under the hands and  
 “ seals of such justices before whom such offender shall be con-  
 “ victed ; and shall also, for every such offence, by the court or  
 “ by such justices, as the case shall happen, be committed to the  
 “ county gaol, there to remain, without bail or mainprise, for the  
 “ space of one whole year, and from thence till the said sum of  
 “ two hundred pounds so forfeited as aforesaid, shall be fully paid  
 “ and satisfied.”

Appeal to the  
 quarter-ses-  
 sions,

† *Sect. 11.* By 6 Geo. 2. c. 35. s. 30. “ Provided nevertheless,  
 “ that any person who shall think him or herself aggrieved, by the  
 “ judgment or determination of such justices in any of the cases  
 “ aforesaid, shall have liberty to appeal to the next quarter-ses-  
 “ sions to be held for the county, city, or place where such judg-  
 “ ment or determination shall be made or given, and that the  
 “ judgment to be given by the justices of the next quarter-sessions  
 “ shall be final.”

whose deter-  
 mination shall  
 be final,

Public act.

† *Sect. 12.* By 6 Geo. 2. c. 35. s. 32. it is further enacted,  
 “ That this act shall be deemed and taken to be a public act, of  
 “ which all judges and justices are to take notice ; and if any ac-  
 “ tion or suit shall be brought against any person for what he  
 “ shall do in pursuance of this act, such action or suit shall be  
 “ commenced within six months, and not afterwards ; and such  
 “ persons shall and may plead the general issue, and give this  
 “ and the special matter in evidence.”

Limitations of  
 actions.

200l. penalty  
 on any offence  
 against this act.

† *Sect. 13.* By 12 Geo. 2. c. 28. which recites, “ That great  
 difficulties had arisen upon the methods of conviction of the of-  
 fenders against the said acts of parliament,” it is enacted, “ That  
 “ if any person or persons shall erect, set up, continue, or keep  
 “ any office or place, under the denomination of a sale or sales of  
 “ houses, lands, advowsons, presentations to livings, plate, jewels,  
 “ ships, goods, or other things by way of lottery, or by lots,  
 “ tickets, numbers or figures, cards or dice ; or shall make, print,  
 “ advertise, or publish, or caused to be made, printed, advertised  
 “ or published, proposals or schemes for advancing small sums of  
 “ money by several persons, amounting in the whole to large  
 “ sums, to be divided among them by chances of the prizes in  
 “ some public lottery or lotteries established or allowed by act of  
 “ parliament, or shall deliver out, or cause or procure to be  
 “ delivered out, tickets to the persons advancing such sums,  
 “ to entitle them to a share of the money so advanced, accord-  
 “ ing to such proposals or schemes ; or shall expose to sale,  
 “ any houses, lands, advowsons, presentations to livings, plate,  
 “ jewels, ships, or other goods, by any game, method, or device  
 “ whatsoever, depending upon, or to be determined by any lot  
 “ or drawing, whether it be out of a box or wheel, or by cards  
 “ or dice, or by any machine, engine, or device of chance of any  
 “ kind whatsoever ; such person or persons, and every or either  
 “ of them, shall, upon being convicted thereof before any one jus-  
 “ tice

“ tice of the peace for any county, riding, or division, or before  
 “ the mayor, or other justice or justices of the peace for any city  
 “ or town corporate, upon the oath or oaths of one or more  
 “ credible witness or witnesses (which said oaths the said jus-  
 “ tices of the peace, and mayor, are hereby authorized, empowered  
 “ and required to administer), or upon the view of such justice  
 “ or justices, or the mayor, justice or justices for any city or town  
 “ corporate, or on the confession of the party or parties accused;  
 “ shall forfeit and lose the sum of two hundred pounds, to be the same how  
 “ levied by distress and sale of the offender's goods, by warrant to be levied and  
 “ under the hands and seals of one or more justice or justices of applied.  
 “ the peace of such county, riding, division, city or town, where  
 “ the offence shall be committed; which said forfeitures, when  
 “ recovered, after deducting the reasonable charges of such pro-  
 “ secution, shall go and be applied, one third thereof to the  
 “ informer, and the remaining two thirds to the use of the poor  
 “ of the parish where such offence shall be committed, ex-  
 “ cepting the said two thirds of such forfeitures which shall be  
 “ incurred by, and recovered upon, any person or persons within  
 “ the city of Bath, which said two thirds shall go and be applied  
 “ to and for the use and benefit of the poor residing within the  
 “ hospital or infirmary lately erected for the benefit of poor per-  
 “ sons resorting to the said city for the benefit of the mineral  
 “ waters, after deducting the charges of conviction as aforesaid.”

† *Sect. 14.* By 12 Geo. 2. c. 28. s. 2. it is enacted, “ That the Games within •  
 “ games of the ace of hearts, pharaoh, basset, and hazard are, intent of the act.  
 “ and are hereby declared to be, games or lotteries by cards  
 “ or dice, within the intent and meaning of the preceding statutes;  
 “ and that all and every person or persons who shall set up,  
 “ maintain, or keep the said games of the ace of hearts, pharaoh,  
 “ basset, and hazard, shall be subject and liable to all and every  
 “ the penalties and forfeitures in and by this act inflicted upon  
 “ any person or persons who shall erect, set up, continue, or  
 “ keep any of the said games or lotteries in this present act men-  
 “ tioned; and shall be prosecuted and convicted, and the penal-  
 “ ties and forfeitures shall be sued for and recovered, in like  
 “ manner as the said penalties and forfeitures are by this act di-  
 “ rected to be sued for and recovered.”

† *Sect. 15.* By 12 Geo. 2. c. 28. s. 3. it is enacted, “ That 50l. penalty on  
 “ all and every person and persons who shall be adventurers in the adventurers.  
 “ any of the said games, lottery or lotteries, sale or sales; or  
 “ shall play, set at, stake, or punt at either of the said games or  
 “ the ace of hearts, pharaoh, basset, and hazard, and shall be  
 “ thereof convicted in such manner and form as in and by this  
 “ act is prescribed; every such person or persons shall forfeit  
 “ and lose the sum of fifty pounds, to be sued for and recovered  
 “ as aforesaid.”

† *Sect. 16.* By 12 Geo. 2. c. 28. s. 4. it is enacted, “ That all Sales by lotte-  
 “ and every such sale and sales of houses, lands, advowsons, pre- ries void;  
 “ sentations to livings, plate, jewels, ships, goods, or other things,  
 “ by any game, lottery or lotteries, machine, engine, or other  
 “ device

and lands, &c.  
forfeited.

"device whatsoever, depending upon, or to be determined by chance or lot, shall, and are hereby declared to be void to all intents and purposes whatsoever: and all such houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, set up and exposed to sale in manner and form aforesaid, shall be forfeited to such person or persons who shall sue for the same by action, bill, plaint, or information, in any of his majesty's courts of record, or at the assizes for any county where the offence shall be committed; in which action, bill, plaint, or information, no essoin, protection, wager of law, or more than one imparlance shall be allowed."

Appeal.

† *Sect. 17.* By 12 Geo. 2. c. 28. s. 5. it is provided, "That if any person or persons shall think him, her, or themselves aggrieved by the judgment or determination of any justice or justices of the peace or mayor as aforesaid, upon any conviction of or for any of the offences in this act; such person or persons may appeal from the said judgment of the said justice or justices, or mayor, to the next general quarter-sessions of the peace for the said county, riding, division, city, or place where such person or persons was or were convicted; but the person or persons so appealed shall, and he, she, and they are hereby directed to give reasonable notice to the prosecutor or prosecutors of such person or persons as shall so appeal, of such his, her, or their intention of bringing and prosecuting such appeal, and shall enter into a recognizance before some justices of the peace for the county, riding, division, city or place wherein the conviction or judgment was made or given, with two sufficient sureties, on condition to try such appeal at the next quarter-sessions which shall be held in and for the county, riding, division, city, or place wherein such conviction or judgment was made or given, next and immediately after the bringing such appeal; and every such appeal and appeals shall, by the court at the said next general quarter-sessions, to which such appeal and appeals is or are made, be then examined, and the matter then finally heard and determined, and not afterwards; and in case such judgment, determination, of conviction, as aforesaid, shall be then and there affirmed, the party appealing shall pay unto the prosecutor or prosecutors, his, her, or their treble costs; and such prosecutor and prosecutors shall have such remedy for the same, as any defendant or defendants hath or have for costs of suit in any other cases by law."

Convictions.

\* † *Sect. 18.* By 12 Geo. 2. c. 28. s. 6. it is provided, "That no such conviction made, or judgment given as aforesaid by this act, shall be set aside by the said court of quarter-sessions for want of form, in case the facts alleged in the said conviction shall be proved to the satisfaction of the said court; nor shall such conviction or judgment be removed or removable by *certiorari*, or any other writ or process whatsoever, into any of his majesty's courts of record at Westminster, until such order or other proceedings shall have been first removed to, and judgment

“ judgment and determination given and made thereupon, by  
“ such court of quarter-sessions as aforesaid.”

† *Sect. 19.* By 12 Geo. 2. c. 28. s. 7. it is also provided, Record remove-  
able upon 100l.  
security.  
“ That no writ of *certiorari*, or other process, shall issue or be  
“ issuable to remove the record of any such conviction from the  
“ said court of quarter-sessions, or to remove any order or other  
“ proceedings taken or made by the said court of quarter-sessions  
“ upon, touching or concerning such conviction, into any of his  
“ majesty’s courts of record at Westminster, until the party or  
“ parties against whom such conviction shall be made, before the  
“ allowance of such writ of *certiorari*, or other process, shall find  
“ two sufficient sureties to become bound to the prosecutor in  
“ the sum of one hundred pounds, with condition to prosecute  
“ the same with effect within six calendar months, and to pay  
“ unto the prosecutor or prosecutors, his, her, or their treble  
“ costs and charges, in case such order or conviction shall be  
“ affirmed.”

† *Sect. 20.* By 12 Geo. 2. c. 28. s. 8. it is enacted, Offenders not  
able to pay the  
penalties, to be  
imprisoned.  
“ any person or persons who shall be convicted of erecting, set-  
“ ting up, maintain, or keeping any of the said lotteries, or the  
“ said games of the ace of hearts, pharaoh, basset, or hazard, or  
“ therein or in either of them shall adventure, and shall not have  
“ sufficient goods and chattels whereon to levy the penalties in-  
“ flicted by this act, or shall not immediately pay the said penal-  
“ ties, or give security for the same; it shall and may be lawful  
“ for the said justice or justices, before whom such person shall  
“ be convicted as aforesaid, to commit such person or persons to  
“ the common gaol of the county, riding, division, city, or place  
“ where such offence shall be committed, there to continue and  
“ remain for any time not exceeding six months.”

† *Sect. 21.* By 12 Geo. 2. c. 28. s. 9. it is also enacted, Penalty on neg-  
lect of justices  
or mayors.  
“ if any justice of the peace, or any other justice herein-before  
“ described, or mayor of any corporation, shall neglect or refuse to  
“ do what is required of him and them by this act; such justices  
“ and mayors so neglecting or refusing shall respectively forfeit  
“ and pay the sum of ten pounds for each offence; one moiety  
“ whereof to be paid to any person or persons who shall sue for  
“ the same, and the other moiety thereof to the poor of the  
“ parish or place where such offence shall be committed; and shall  
“ be recovered with full costs of suits, by action, bill, plaint, or  
“ information, in any of his majesty’s courts of record, or at the  
“ assizes for any county; in which action, bill, plaint, or informa-  
“ tion, no essoin, protection, or wager of law, nor more than one  
“ imparlance shall be allowed; such prosecution being com-  
“ menced within six months next after such refusal of such jus-  
“ tices or mayor.”

† *Sect. 22.* By 12 Geo. 2. c. 28. s. 10. it is provided, This act not to  
hinder any  
games in palaces  
where the king  
resides;  
“ nothing in this act, or in any former acts against gaming, con-  
“ tained, shall extend to prevent or hinder any person or persons  
“ from gaming or playing at any of the games in this or in any of  
“ the said former acts mentioned within any of his majesty’s  
“ royal

“royal palaces, where his majesty, his heirs or successors shall then reside.”

nor to affect  
the right to any  
lands, &c. held  
by lot.

† Sect. 23. By 12 Geo. 2. c. 28. s. 11. it is also provided, “That nothing herein contained shall extend, or be in any ways construed, deemed, or taken to extend, or in any sort to affect or prejudice any estate or interest in, out of, or to, any manors, honours, royalties, lands, tenements, advowsons, presentations, rents, services, and hereditaments whatsoever, which shall or may at any time or times hereafter be according to the laws now in being legally allotted to, or held by, or by means of any allotment or partition by lots; but that all persons who now are, or that shall hereafter become, really and truly seised as part-owners, joint-tenants, and tenants in common of any manors, honours, royalties, lands, tenements, advowsons, presentations, rents, services, and hereditaments, shall, and he, she, and they, and his, her, and their heirs and assigns is and are hereby made and continued capable to accept and take such estates and interest, and parts therein, in such and the like manner, and to such and the like uses, as he, she, or they might, would, or could, have done by, or by virtue or in consequence of any lot, scroll, chance or allotment whatsoever, had this present act never been made; any thing herein contained to the contrary thereof notwithstanding.”

Limitation of  
actions.

† Sect. 24. By 12 Geo. 2. c. 28. s. 12. it is further enacted, “That if any suit or action shall be commenced or prosecuted against any person or persons for any thing done in pursuance of this act, every such suit or action shall be commenced within three calendar months next after the fact was committed, and not afterwards; and shall be laid or brought in the county, city, or place where the cause of action shall arise, and not elsewhere; and the defendant and defendants therein shall and may plead the general issue, and give this act and the special matter in evidence at the trial to be had thereupon, and that the same was done in pursuance of, or by the authority of this act; and if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her, or their action or actions, suit or suits, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs; the defendant or defendants shall and may recover treble costs, and have like remedy for the same, as any defendant or defendants hath or have for costs in any other cases by law.”

General issue.

Treble costs.

12 Geo. 2. c. 28. † Sect. 25. By 13 Geo. 2. c. 19. s. 9. it is recited, “That whereas a good and wholesome law was made in 12 Geo. 2. for the more effectual preventing excessive and deceitful gaming; but, contrary to the true intent and meaning thereof, some fraudulent and deceitful games have been invented, and a certain game, called *passage* is now daily practised and carried on, to the ruin and impoverishment of many of his majesty’s subjects;” it is therefore enacted, “That the said game of passage, and all and every other game and games invented, or to be invented, with one or more die or dice, or with any other instrument, engine,  
“or

“ or device, in the nature of dice, having one or more figures or numbers thereon (backgammon and the other games now played with the backgammon tables only excepted), are and shall be deemed to be games or lotteries by dice within the intent and meaning of the preceding statute: and all and every person and persons who shall set up, maintain, or keep any office, table or place (save and except as in the preceding statute is provided and declared) for the said game of passage, or for any other such game or games as aforesaid (backgammon and the other games now played with the backgammon tables only excepted,) shall severally forfeit, be subject and liable to, all and every the penalties and forfeitures in and by the preceding statute inflicted upon any person or persons who shall erect, set up, continue, or keep any of the games or lotteries in the preceding statute mentioned; and all and every person or persons who shall play, set at, stake, or adventure at the said game of passage, or at any other such game, as aforesaid (backgammon and the other games now played at the backgammon tables only excepted), save and except as in the preceding statute is provided and declared, he and they respectively shall severally forfeit, be subject and liable to all and every the penalties and forfeitures in and by the preceding statute inflicted upon any person or persons who shall play set at, stake, or adventure at any of the said games in the preceding statute mentioned; and all every such offenders respectively shall be prosecuted and convicted, and the several penalties and forfeitures shall be sued for and recovered and disposed of in like manner, and to such uses as the several penalties and forfeitures in either of such cases are by the preceding statute directed to be sued for, and recovered, and disposed of.”

Games of passage, and other games with dice, prohibited. See farther, 29 Geo. 2. c. 7.

† *Sect. 26.* By 13 Geo. 2. c. 19. s. 10. it is further enacted, “ That in any action, bill, plaint, or information to be brought or commenced by virtue of this act, no essoin, protection, wager of law, or more than one imparlance, shall be allowed; and that over and above the penalties and forfeitures to be recovered by virtue of this act, the plaintiff or informer shall recover his or her double costs.”

Double costs.

### *Stock Jobbing.*

† *Sect. 1.* By 7 Geo. 2. c. 8. it is recited, “ That great inconveniences have arisen, and do daily arise, by the wicked, pernicious, and destructive practice of stock-jobbing, whereby many of his majesty's good subjects have been and are diverted from pursuing and exercising their lawful trades and vocations, to the utter ruin of themselves and their families, to the great discouragement of industry, and to the manifest detriment of trade and commerce;” for remedy thereof it is enacted, “ That all contracts and agreements whatsoever, which shall be made or entered into by or between any person or persons whatsoever, upon which any premium, or consideration in the nature of a premium

See 4 Burr. 2069.

All contracts made for liberty to put upon, accept, or refuse, any public stocks or securities, and w<sup>h</sup> &c. shall be void



“ premium, shall be given or paid for liberty to put upon, or to  
 “ deliver, receive, accept, or refuse, any public or joint stock, or  
 “ other public securities whatsoever, or any part, share, or in-  
 “ terest therein, and also all wagers and contracts in the nature  
 “ of wagers, and all contracts in the nature of puts and refusals,  
 “ relating to the then present or future price or value of any such  
 “ stock or securities as aforesaid, shall be null and void to all  
 “ intents and purposes whatsoever, and all premiums, sum  
 “ or sums of money whatsoever, which shall be given, re-  
 “ ceived, paid, or delivered, upon all such contracts or agree-  
 “ ments, or upon any such wagers, or contracts in the nature of  
 “ wagers, as aforesaid, shall be restored and repaid to the person  
 “ or persons who shall give, pay, or, deliver the same, who shall  
 “ be at liberty, within six months from and after the making such  
 “ contract or agreement, or laying any such wager, to sue for  
 “ and recover the same from the person or persons to whom the  
 “ same is or shall be paid or delivered, with double costs of suit,  
 “ by action of debt founded on this act, to be prosecuted in any  
 “ of his majesty’s courts of record, in which action no es-  
 “ protection, wager of law, or more than one imparlance, shall  
 “ be allowed; and it shall be sufficient therein for the plaintiff  
 “ to allege, that the defendant is indebted to the plaintiff, or has  
 “ received to the plaintiff’s use, the money or premium so paid  
 “ or received, whereby the plaintiff’s action accrued to him, ac-  
 “ cording to the form of this statute, without setting forth the  
 “ special matter.”

Persons sued  
on this act  
obliged to an  
swer on oath.

† *Sect. 2.* By 7 Geo. 2. c. 8. s. 2. For the better discovery  
 of the monies or premium which shall be given, paid, or deliv-  
 ered, and to be sued for and recovered, as aforesaid, it is further  
 enacted, “ That all and every the person or persons, who, by  
 “ virtue of this present act, shall or may be liable to be sued for  
 “ the same, shall be obliged and compellable to answer upon  
 “ oath such bill as shall be preferred against him or them in  
 “ any court of equity for discovering any such contract or wager,  
 “ and the sum of money or premium so given, paid, or delivered,  
 “ as aforesaid.”

Security for  
costs.

† *Sect. 3.* But by 7 Geo. 2. c. 8. s. 3. it is provided, “ That  
 “ the plaintiffs, relators, or informers, in such bill, shall and do  
 “ (at the time of bringing or filing such bill) give good and suffi-  
 “ cient security to answer and pay the defendants in such bill  
 “ full costs of suit, in case such costs shall be adjudged to the  
 “ defendants, and that no person shall be obliged to appear or to  
 “ answer such bill until such security is given.”

Five hundred  
pounds penalty  
on making or ex-  
ecuting any such  
puts or bargains.

† *Sect. 4.* By 7 Geo. 2. c. 8. s. 4. it is further enacted,  
 “ That all and every person or persons whatsoever, who shall  
 “ enter into, make, or execute, any such contract, bargain or  
 “ agreement, upon which any premium, or consideration in the  
 “ nature of a premium, shall be given or paid for liberty to put  
 “ upon, or to deliver, receive, accept, or refuse, any public or  
 “ joint stock, or other public securities whatsoever, or any part,  
 “ share, or interest therein, or any contract or bargain in the  
 “ nature of puts and refusals, as aforesaid, or shall lay any such  
 “ wager,

“wager, or make any such contract in the nature of a wager, as  
 “aforesaid, (except such person or persons who shall actually and  
 “*bonâ fide*, without covin or collusion, sue and with effect prose- Exceptions.  
 “cute for the recovery of the money or premium given, delivered,  
 “or paid, by him, her, or them, as aforesaid; and also except  
 “such person or persons, who shall voluntarily, before any action  
 “or suit commenced, actually and *bonâ fide*, without covin or  
 “collusion, repay or tender, before one or more witness or wit-  
 “nesses, such monies or premium as he, she, or they, shall have  
 “had, taken, received, or been paid, as aforesaid;” and also except  
 “such persons who shall discover such transactions in any court  
 “of equity,) shall forfeit and pay the sum of five hundred pounds;  
 “and also all and every brokers, agents, scriveners, or other per-  
 “sons negotiating, transacting, or writing, any such contract,  
 “bargain, or agreement, as aforesaid, shall likewise forfeit and  
 “pay the sum of five hundred pounds; which said penalties shall  
 “and may be recovered by action of debt, bill, plaint, or informa-  
 “tion, in any of his majesty’s courts of record at Westminster, in  
 “which no essoin, privilege, protection, or wager of law, or more  
 “than one imparlance, shall be allowed; one moiety thereof to  
 “the use of his majesty, his heirs and successors, and the other  
 “moiety thereof to the use of him, her, or them, who shall sue  
 “for the same.”

† Sect. 5. By 7 Geo. 2. c. 8. s. 5. “For preventing the evil One hundred pounds penalty on giving or receiving money to compound differences relating to stock not actually delivered.  
 “practice of compounding or making up differences for stocks or  
 “other securities bought, sold, or at any time hereafter to be  
 “agreed so to be, it is further enacted, That no money or other  
 “consideration whatsoever (except as herein-after is provided)  
 “shall be voluntarily given, paid, had, or received, for the com-  
 “pounding, satisfying, or making up any difference for the not  
 “delivering, transferring, having, or receiving any public or joint  
 “stock, or other public securities, or for the not performing of  
 “any contract or agreement so stipulated and agreed to be per-  
 “formed; but that all and every such contract and agreement  
 “shall be specifically performed and executed on all sides, and  
 “the stock or security thereby agreed to be assigned, transferred,  
 “or delivered, shall be actually so done, and the money, or other  
 “consideration thereby agreed to be given and paid for the same,  
 “shall also be actually and really given and paid; and all and every  
 “person and persons whatsoever, who shall voluntarily compound,  
 “make up, pay, satisfy, take, or receive, such difference money,  
 “or other consideration whatsoever, for the not delivering, trans-  
 “ferring, assigning, having, or receiving such stock, or other  
 “security, so to be agreed to be delivered, transferred, assigned,  
 “had, or received, as aforesaid (except in the manner herein-after  
 “provided), shall forfeit and pay the sum of one hundred pounds,  
 “to be recovered by action of debt, bill, plaint, or information, in  
 “any of his majesty’s courts of record at Westminster, in which no  
 “essoin, privilege, protection, or wager of law, or more than one  
 “imparlance, shall be allowed; one moiety thereof to the use of  
 “his majesty, his heirs and successors, and the other moiety there-  
 “of to the use of him, her, or them, who shall sue for the same.”

† Sect. 6. But by 7 Geo. 2. c. 8. s. 6. it is provided, “That  
 “no

Stock sold, and not paid for at the time prefixed, may be sold to any other persons.

“no person or persons, who shall sell any public or joint stock, or other public securities, to be delivered and paid for on a certain day, and which shall be refused or neglected to be paid for according to such agreement, shall be obliged to transfer the same; but it shall and may be lawful for such person or persons to sell such stock or other securities, which shall be so refused or neglected to be paid for, to any other person or persons, for the best price which can be obtained; and after such sale to receive (if the parties can agree) of to recover, as aforesaid, from the person or persons who first contracted for the same, all the damage which shall be sustained thereby.”

Stock bought, and not transferred at the time prefixed, the buyer may purchase other stock, and recover his damages,

† *Sect. 7.* And by 7 Geo. 2. c. 8. s. 7. it is provided also, “That it shall and may be lawful to and for any person or persons, who shall buy any public or joint stock, or other public securities, to be accepted and paid for on a future day, and which shall be refused or neglected to be transferred, to buy the like quantity of such stock, or other public securities, of any other person or persons, at the current market price, and to recover and receive, after such purchase and acceptance (if the parties can agree), from the person or persons who first contracted to sell or deliver the same, the damage which shall be sustained by reason of the not delivering or not transferring such stock or other securities; any thing in this act, or any law, usage, or custom, to the contrary notwithstanding.”

Five hundred pounds penalty on buying or selling stock of which they are not actually possessed at the time of the contract.

† *Sect. 8.* By 7 Geo. 2. c. 8. s. 8. after reciting, that “it is a frequent and mischievous practice for persons to sell and dispose of stocks, or other securities, of which they are not possessed,” it is further enacted, “That all contracts and agreements whatsoever, which shall be made or entered into for the buying, selling, assigning, or transferring, of any public or joint stock or stocks, or other public securities whatsoever, or of any part, share, or interest therein, whereof the person or persons contracting or agreeing, or on whose behalf the contract or agreement shall be made, to sell, assign, and transfer the same, shall not, at the time of making such contract or agreement, be actually possessed of, or entitled unto, in his, her, or their own right, or in his, her, or their own name or names, or in the name or names of a trustee or trustees to their use, shall be null and void to all intents and purposes whatsoever; and all and every person or persons whatsoever, contracting or agreeing, or on whose behalf, and with whose consent, any contract or agreement shall be made, to sell, assign, or transfer, any public or joint stock or stocks, or other public securities, whereof such person or persons shall not, at the time of making such contract or agreement, be actually possessed of, or entitled unto, in his, her, or their own name or names, or in the name or names of a trustee or trustees to their use, or their own right as aforesaid, shall forfeit and pay the sum of five hundred pounds, to be recovered by action of debt, bill, plaint, or information, in any of his majesty’s courts of record at Westminster, in which no essoin, privilege, protection, or wager of law, or more than one imparlance, shall be allowed; one moiety thereof to the use of his majesty, his heirs and successors, and the other moiety thereof

“to

One hundred pounds penalty on brokers negotiating such contract.

“ to the use of him, her, or them, who shall sue for the same ;  
 “ and all and every broker or brokers, agent or agents, who shall  
 “ negotiate, transact, or intermeddle, in the making or procuring  
 “ to be made any such contract or agreement as aforesaid, and  
 “ shall know that the person or persons, by whom or on whose  
 “ behalf such contract or agreement shall be made, is or are not  
 “ possessed of, or entitled unto, the stock or security concernig  
 “ which such contract or agreement shall be made, in his, her, or  
 “ their own name or names, or in the name or names of a trustee  
 “ or trustees for their use or right, shall, for every such offence,  
 “ forfeit and pay the sum of one hundred pounds, to be recovered  
 “ by action of debt, bill, plaint, or information, in any of his  
 “ majesty’s courts of record at Westminster, in which no essoin,  
 “ privilege, protection, or wager of law, or more than one impar-  
 “ lance, shall be allowed; one moiety thereof to the use of his  
 “ majesty, his heirs and successors, and the other moiety thereof  
 “ to the use of him, her or them, who shall sue for the same.”

† Sect. 9. By 7 Geo. 2. c. 8. s. 9. “ All and every broker or  
 “ brokers, or other person or persons, who shall negotiate or act  
 “ as a broker receiving brokerage in the buying, selling, or other-  
 “ wise disposing of any of the said public or joint stocks, or other  
 “ public securities, shall respectively keep a book of register,  
 “ which shall be called The Broker’s Book; in which said book  
 “ he and they shall fairly, justly, and truly enter, all contracts,  
 “ agreements, and bargains, that he or they shall from time to  
 “ time make between any person or persons whatsoever, on the  
 “ day of the making such contract or agreement, together with  
 “ the names of the principal parties, as well buyers as sellers, and  
 “ also the day of making such contract or agreement, to the in-  
 “ tent and purpose that such broker or brokers, and other person  
 “ or persons acting or negotiating as such as aforesaid, shall,  
 “ from time to time, produce such book or register when there-  
 “ unto lawfully required; and in case such broker or brokers, or  
 “ any other who shall negotiate or act as a broker as aforesaid,  
 “ in relation to any the said matters, shall not keep such book or  
 “ register, or shall wilfully omit to enter therein fairly, justly, and  
 “ truly, any such contract, bargain, or agreement, as aforesaid, he  
 “ or they shall, for every such offence or omission, forfeit and pay  
 “ the sum of fifty pounds, to be recovered by action of debt, bill,  
 “ plaint, or information, in any of his majesty’s courts of record  
 “ at Westminster, in which no essoin, privilege, protection, or  
 “ wager of law, or more than one imparlance, shall be allowed;  
 “ one moiety thereof to the use of his majesty, his heirs and suc-  
 “ cessors, and the other moiety thereof to the use of him, her, or  
 “ them, who shall sue for the same.”

All contracts  
for stock to be  
truly entered in  
the broker’s  
book.

on penalty of  
50*l.* for each of-  
fence.

† Sect. 10. But by 7 Geo. 2. c. 8. s. 10. it is provided “ That  
 “ nothing in this act contained shall extend, or be construed to  
 “ extend, to any contracts or agreements for the purchase or sale  
 “ of stock, annuities, or other public securities, to be made with  
 “ the privity of the accountant-general of the court of chancery, in  
 “ pursuance of any decree or order of the said court; but that all  
 “ such contracts and agreements may be made and performed in  
 “ the same manner as they might have been if this act had never  
 “ been made.”

Accountant of  
the chancery  
may be as be-  
fore.

This act not to hinder persons from lending money on public stocks, or prevent the re-delivery thereof on repayment of the money lent.

† *Sect. 11.* And by 7 Geo. 2. c. 8. s. 11. it is provided also, That nothing in this act shall extend, or be construed to extend, to hinder or prevent any person or persons from lending any sum or sums of money on any public or joint stock, or other public securities whatsoever, or any part, share, or interest therein, or to prevent or hinder any defeasance, contract, or agreement, being made and entered into for the re-delivering, assigning, or transferring, such public or joint stock, or other public securities, or any part, share, or interest therein, upon the repayment of the sum or sums of money which shall have been lent and borrowed thereupon, with interest for the same, so as no premium or other consideration whatsoever be paid to, or received by, the person or persons lending such money, for or in consideration of such loan, more than legal interest."

*Jaques v. Withey*, 2 Bl. Rep. 1075.

† *Sect. 12.* It is said, that if money be paid by a party to a stockjobbing transaction, he cannot recover it back as having been paid upon an illegal consideration; because both parties are made criminal, and liable to the penalties.

*Falkney v. Reynolds*, 4 Burr. 2069.

† *Sect. 13.* But it has been decided, that if *A.* and *B.* are concerned in stockjobbing contracts, and *C.* not a party to the illegal transaction, pay the whole loss on the joint account, and *B.* gives a bond to *C.* for his moiety, the bond is good; but if *A.* or *B.* had paid all the money, neither of them could have maintained an action against the other for a moiety.

*Petrie v. Hanway*, 3 Term Rep. 418.

† *Sect. 14.* So also it has been determined, that if two persons jointly engage in a stockjobbing transaction, and incur losses, and employ a broker to pay the differences, and one of them repay the broker, with the privity and consent of the other, the whole sum, he may recover a moiety from that other in an action for money paid to his use, notwithstanding the above statute.

### *Horse Racing.*

Horse racing may also be considered as a species of gaming, or at least as inducing to it by betting. It is therefore here noticed, to state that by stat. 13 Geo. 2. c. 19. All matches to be run for must not be for less than £50: but as it is not an indictable offence, the reader is referred for further particulars to *Burn's Justice*, tit. HORSE RACING.

### PURCHASING AND SELLING OFFICES AND PLACES UNDER GOVERNMENT, &c.

It is of the utmost importance to the public welfare, that, in the administration of the government, none but persons competent to perform the duties of their offices should be admitted into any department. But if the sale of offices were allowed to those who have the patronage and appointment, it is evident there would be the greatest danger of situations being filled, not by those whose talents fitted them for the station, but whose purses enabled them to obtain it. The sale of office may therefore justly

justly be ranked as an offence against the political economy of the state. So long ago as by stat. 5, 6. Ed. 6. c. 16. (before noticed in *Offence against Public Justice*. p. 415. the sale of office concerning the administration of justice was prohibited under the penalty of the forfeiture of the office, and rendering the person purchasing disabled to hold the same. But this statute being thought inadequate to the extent of the mischief, it is further enacted, by stat. 49 Geo. 3. c. 126. "For the further Prevention of the Sale and Brokerage of Offices," which recites the foregoing statute of 5 Ed. 6. and then declares and enacts, "That from and after the passing of this act, the said act, and all the provisions therein contained, shall extend and be construed to extend to Scotland and Ireland, and to all offices in the gift of the crown, or of any office appointed by the crown, and all commissioners, civil, naval or military, and to all places and employments, and to all deputations to any such offices, commissions, places, or employments, in the respective departments or offices, or under the appointment or superintendence and controul of the lord high treasurer or commissioners of the treasury, the secretary of state, the lords commissioners for executing the office of lord high admiral, the master-general and principal officers of his majesty's ordnance, the commander-in-chief, the secretary at war, the paymaster-general of his majesty's forces, the commissioners for the affairs of India, the commissioners of the excise, the treasurer of the navy, the commissioners of the navy, the commissioners for victualling, the commissioners of transports, the commissary-general, the storekeeper-general, and also the principal officers of any other public department or office of his majesty's government in any part of the united kingdom, or in any of his majesty's dominions, colonies, or plantations which now belong or may hereafter belong to his majesty, and also to all offices, commissions, places and employments belonging to or under the appointment or controul of the united company of merchants of England trading to the East Indies, in as full and ample a manner as if the provisions of the said act were repeated as to all such offices, commissions, places and employments, and made part of this act; and the said act and this act, and all the clauses and provisions therein respectively contained, shall be construed as one act, as if the same had been herein repeated and re-enacted."

Ante, p. 415.

Stat. of Ed. 5.  
extended to all  
offices under the  
crown.

"Provided always, that where the right, estate, or interest of any person or persons shall be forfeited under any of the provisions of the said act or this act, the right of such appointment shall immediately rest in and belong to his majesty, his heirs and successors.—49 Geo. 3. c. 126. s. 2.

"From and after the passing of this act, if any person or persons shall sell or bargain for the sale of, or receive, have, or take any money, fee, gratuity, loan of money, reward, or profit, directly or indirectly, or any promise, agreement, covenant, contract, bond, or assurance, or shall by any way, device, or means, contract or agree to receive or have any money, fee, gratuity, loan of money, reward or profit, directly or indirectly, and also if any person or persons shall purchase or bargain for the purchase

Penalty on the  
sale of offices.

"chase

“chase of, or give or pay any money, fee, gratuity, loan of money, reward or profit, or make or enter into any promise, agreement, covenant, contract, bond, or assurance, to give or pay any money, fee, gratuity, loan of money, reward or profit, or shall by any way, means, or device, contract or agree to give or pay any money, fee, gratuity, loan of money, reward or profit, directly or indirectly, for any office, commission, place or employment specified or described in the said recited act or this act, or within the true intent or meaning of the said act or this act, or for any deputation thereto, or for any part, parcel, or participation of the profits thereof, or for any appointment or nomination thereto or resignation thereof, or for the consent or consents, or voice or voices of any person or persons to any such appointment, nomination or resignation, then and in every such case, every such person, and also every person who shall wilfully and knowingly aid, abet or assist such person therein, shall be deemed and adjudged guilty of a misdemeanor.—49 Geo. 3. c. 126 s. 3.

Taking money,  
&c. for interest,  
solicitation, &c.  
a misdemeanor.

“From and after the passing of this act, if any person or person shall receive, have, or take any money, fee, reward, or profit, directly, or indirectly, or take any promise, agreement, covenant, contract, bond, or assurance, or by any way, means, or device, contract or agree to receive, or have any money, fee, gratuity, loan of money, reward or profit, directly or indirectly, for any interest, solicitation, petition, request, recommendation, or negotiation whatever, made or to be made, or pretended to be made, or under any pretence of making or causing or procuring to be made any interest, solicitation, petition, request, recommendation, or negotiation, in or about or in anywise touching, concerning, or relating to any nomination, appointment, or deputation to or resignation of any such office, commission, place, or employment as aforesaid, or under any pretence for using or having used any interest, solicitation, petition, request, recommendation, or negotiation, in or about any such nomination, appointment, deputation, or resignation, or for the obtaining or having obtained the consent or consents, or voice or voices of any person or persons as aforesaid, to such nomination, appointment, deputation, or resignation; and also if any person or persons shall give or pay, or cause or procure to be given or paid, any money, fee, gratuity, loan of money, reward or profit, or make or cause, or procure to be made, any promise, agreement, covenant, contract, bond or assurance, or by any way, means, or device, contract or agree, or give or pay, or cause or procure to be given or paid, any money, fee, gratuity, loan of money, reward, or profit, for any solicitation, petition, request, recommendation, or negotiation whatever, made or to be made, that shall in anywise touch, concern, or relate to any nomination, appointment, or deputation to or resignation of any such office, commission, place, or employment as aforesaid, or for the obtaining or having obtained, directly or indirectly, the consent or consents, or voice or voices of any person or persons as aforesaid, to any such nomination, appointment, deputation, or resignation; and also if any person

“or

"or persons shall, for or in expectation of gain, fee, gratuity, loan of money, reward, or profit, solicit, recommend, or negotiate in any manner, for any person or persons in any matter that shall in anywise touch, concern, or relate to any such nomination, appointment, deputation, or resignation aforesaid, or for the obtaining, directly or indirectly, the consent or consents, or voice or voices of any such person or persons, to any such nomination, appointment, or deputation, or resignation aforesaid, then and in every such case, every such person, and also every person who shall wilfully and knowingly aid, abet, or assist such person therein, shall be deemed and adjudged guilty of a misdemeanor."—49 Geo. 3. c. 126. s. 4.

"And whereas, on the pretence of negotiating or soliciting the sale, transfer, or appointment, of any office or offices which, under the exception of this act, or otherwise, it may be lawful to sell, offices for negotiating the same, and advertisements may be published, by means and under the colour of which illegal transactions intended to be prohibited by this act may be carried on; be it therefore further enacted, That from and after the passing of this act, if any person or persons shall open or keep any house, room, office, or place for the soliciting, transacting, or negotiating in any manner whatever, any business relating to vacancies in, or the sale or purchase of, or appointment, nomination, or deputation to, or resignation, transfer, or exchange of any offices, commissions, places, or employments whatever in or under any public department, then and in every such case every such person, and also every person who shall wilfully and knowingly aid, abet, or assist therein, shall be deemed and adjudged guilty of a misdemeanor."—49 Geo. 3. c. 126. s. 5.

To keep any office, &c. for negotiating for sale and purchase of offices, a misdemeanor.

"If any person or persons shall advertise or publish, or cause or procure to be advertised or in any manner published, any house, room, office, or place to have been or to be opened, set up, or kept for any of the purposes aforesaid, or advertise or publish, or cause or procure to be advertised or published, the name or names of any person or persons as broker or brokers, agent or agents, solicitor or solicitors, for any of the purposes aforesaid, or print, or cause or procure, or permit or suffer to be printed or advertised, any advertisement or advertisements, proposal or proposals, for any of the purposes aforesaid, then, and in such case, such person or persons shall forfeit for every such offence, the sum of fifty pounds, to be sued for, levied, or recovered in any of his majesty's courts of record at Westminster, as to all offences committed in England, or at Dublin, as to offences committed in Ireland, or in his majesty's courts in Scotland as to offences committed in Scotland, respectively; and the whole of every such penalty shall go to the person who shall sue for the same, with full costs of suit."—49 Geo. 3. c. 126. s. 6.

To advertise, a penalty of £50.

By sect. 7. the act is not to extend to the sale of military

commissions at regulated prices. not to extend to sale of military commissions at regulated prices.



commissions at the regulated price; but any officer giving more than the regulated price is to forfeit the commission and be cashiered, the commission to be sold and half the produce given to the informer; nor to offices excepted in the former act, 5 & 6 Edw. 6. s. 16. nor to lawful deputies.—*Sect. 10.*

Offences in colonies may be tried in Middlesex.

By 53 Geo. 3. c. 54. offences against the above act committed in the colonies are to be tried in the court of king's bench, under the provisions of 42 Geo. 3. c. 85.

END OF BOOK I.

ADDENDA.

## ADDENDA ET CORRIGENDA.

IN the new arranging of the work, the Editor is sorry to say that the following clauses of acts have not been placed under their proper heads—they are therefore now inserted by way of Addenda.

### *Seducing Persons in His Majesty's Forces.*

(Offences against the King, p. 49.)

THE statute 37 Geo. 3. c. 70. intituled, “ An act for the better prevention and punishment of attempts to seduce persons serving in his majesty's forces by sea or land, from their duty and allegiance to his majesty, or to incite them to mutiny or disobedience,” recites that “ divers wicked and evil-disposed persons, by the publication of written or printed papers, and by malicious and advised speaking, have of late industriously endeavoured to seduce persons serving in his majesty's forces by sea and land from their duty and allegiance to his majesty, and to incite them to mutiny and disobedience;” and then enacts, “ that from and after the passing of this act, any person who shall maliciously and advisedly endeavour to seduce any person or persons serving in his majesty's forces by sea or land from his or their duty and allegiance to his majesty, or to incite or stir up any such person or persons to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatsoever, shall, on being legally convicted of such offence, be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy.” (Made perpetual by 57 Geo. 3. c. 7.)

In an indictment upon this statute, for “ endeavouring” to seduce a soldier from his duty, it was held by the judges that it was sufficient to state the endeavour without stating the means employed.—1 P. & B. 180. (in Cam. S.)

### *Offences against the Persons of Women.*

(Vide Chap. XVI.)

The statute 43 Geo. 3. c. 58. enacts, that “ if any person or persons from and after 1st July, 1803, shall, either in England  
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“ or Ireland, wilfully, maliciously, and unlawfully administer to  
 “ or cause to be administered to or taken by any of his majesty’s  
 “ subjects, any deadly poison, or other noxious and destructive  
 “ substance or thing, with intent such his majesty’s subject or  
 “ subjects thereby to murder,<sup>(1)</sup> or thereby to cause or procure  
 “ the miscarriage of any woman then being quick with child,  
 “ that then and in every such case the person or persons so  
 “ offending, their counsellors, aiders, and abettors, knowing of  
 “ and privy to such offence, shall be and are hereby declared to  
 “ be felons, and shall suffer death as in cases of felony without  
 “ benefit of clergy.”

By s. 2. it is recited, that “ whereas it may sometimes happen  
 that poison, or some other noxious and destructive substance or  
 thing may be given, or other means used, with intent to procure  
 miscarriage or abortion where the woman may not be quick with  
 child at the time, or it may not be proved that she was quick  
 with child;” and enacted, “ that if any person or persons, from  
 “ and after 1st July, 1803, shall wilfully and maliciously admi-  
 “ nister to, or cause to be administered to or taken by, any  
 “ woman, any medicines, drug, or other substance or thing what-  
 “ soever, or shall use or employ, or cause or procure to be used  
 “ or employed, any instrument or other means whatsoever, with  
 “ intent thereby to cause or procure the miscarriage of any woman  
 “ not being, or not being proved to be, quick with child at the  
 “ time of administering such things or using such means, that  
 “ then and in every such case the person or persons so offending,  
 “ their counsellors, aiders, and abettors, knowing of and privy to  
 “ such offence, shall be and are hereby declared to be guilty of  
 “ felony, and shall be liable to be fined, imprisoned, set in and  
 “ upon the pillory,<sup>(2)</sup> publicly or privately, or to suffer one or  
 “ more of the said punishments, or to be transported beyond the  
 “ seas for any term not exceeding fourteen years, at the discre-  
 “ tion of the court before which such offender shall be tried and  
 “ convicted.”

*Malicious Mischief.*

( Vide p. 35—45 )

*The following clauses are in substance and nearly verbatim  
 the same as those in 11 Geo. 2. c. 22. set out p. 345; but as  
 the former statute is not repealed, they ought both to have been  
 there set out.*

The statute 36 Geo. 3. c. 9. intituled, “ An act to prevent  
 obstructions to the free passage of grain within the kingdom,”  
 recites, “ that divers persons have assembled themselves in great  
 numbers, and committed great violences, with intent to hinder  
 the passage of corn and grain from place to place, whereby the

(1) See Assaults with Intent to Murder, p. 112.

(2) Abolished by 56 Geo. 3. c. 138.

necessary circulation of corn and grain within the kingdom may be prevented;" and then enacts, "that if any person or persons shall, from and after the passing of this act, wilfully and maliciously beat, wound, or use any other violence to or upon any person or persons, with intent to deter or hinder him or them from buying of corn or grain in any market, or other place within this kingdom, or shall unlawfully stop or seize any wheat, flour, meal, malt, or other grain, in or on the way to or from any city, market town, or place in this kingdom, or shall wilfully and maliciously break, cut, or destroy any waggon, cart, or other carriage, wherein any such wheat, flour, meal, malt, or other grain, shall be loaded, or the harness of any horse or horses, drawing or carrying the same, or shall unlawfully take off from any such carriage, or drive away, kill, or wound any such horse or horses, or unlawfully beat or wound the driver or drivers of any such waggon, cart, or other carriage, or horse, so loaded, with intent to stop such wheat, flour, meal, malt, or other grain, or shall, by cutting of the sacks, or otherwise, scatter or throw abroad any such wheat, flour, meal, malt, or other grain, or shall take or carry away, destroy, spoil, or damage the same, or any part thereof, every and all such person or persons, being thereof lawfully convicted before any two or more justices of the peace of the county, shire, stewartry, riding, division, town, or place corporate, wherein such offence or offences shall be committed, or before the justices of the peace in open sessions (who are hereby authorized and empowered summarily and finally to hear and determine the same), shall be sent to the common gaol or house of correction, there to continue and be kept to hard labour for any time not exceeding the space of three months, nor less than one month."—Sect. 1.

"If any such person or persons so convicted shall commit any of the offences aforesaid a second time, or if, from and after the passing of this act, any person or persons, with intent to prevent or hinder any corn, meal, flour, malt, or grain from being lawfully carried or removed from any place whatsoever, shall wilfully and maliciously pull, throw down, or otherwise destroy any storehouse or granary, or other place in which corn, meal, flour, malt, or grain shall be then kept, or shall unlawfully enter any such storehouse, granary, or other place, and take and carry away any corn, flour, meal, malt, or grain therefrom, or shall throw abroad or spoil the same, or any part thereof, or shall unlawfully enter on board any ship, barge, boat, or vessel, and wilfully and maliciously take and carry away, cast and throw out therefrom, or otherwise spoil or damage any corn, flour, meal, malt, or grain therein, every person so offending, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be transported for the space of seven years, in like manner as other felons are directed to be transported by the laws and statutes of this realm; and if any such offender, so transported, shall return into this kingdom before the expiration of the said seven years, he or she shall suffer death as a felon, without benefit of clergy."—Sect. 2.

## ADDENDA ET CORRIGENDA.

*Page 124.*—*Dele Sect. 3.* the clause of 39 Eliz. c. 9. which takes away clergy from those who forcibly marry women against the provisions of 3 H. 7. c. 2.—that clause being repealed by 1 Geo. 4. c. 115.

*Page 206.* line 9. from the bottom.—Insert the word “no,” viz. instead of “that it is part,” read, “that it is *no* part.”

*Page 284.*—Add Note, “Clergy is restored to the offence of taking reward to restore stolen goods by 1 Geo. 4. c. 115.”

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 constable may imprison persons actually in his view engaged in an affray, even if the affray be made upon himself, until he can take them to a magistrate; but if only hot words are used, he can only command them to avoid fighting, on pain of imprisonment. *ib.* s. 14  
 And if the affray be in a house, or affrayers fly to a house, the constable may break open doors. *ib.* s. 16  
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 A justice may issue his warrant to apprehend an affrayer, &c. *ib.* s. 18  
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 Affrays are, in general, punishable by fine and imprisonment; in proportion to the heinousness of the offence. *ib.* s. 20  
 As in fighting a duel, or carrying a challenge (for which one was fined £100), or by attempting a rescue, or obstructing officers in the discharge of their duty, or by committing the offence in any consecrated place. 492. s. 21, 22, 23  
 By 5 & 6 Edw. 6. c. 4. to quarrel, chide, or brawl, in any church or church-yard, incurs suspension *ab ingressu ecclesie* in a layman, and from ministration of office in a clerk, for so long as the ordinary shall think fit. *ib.* s. 24  
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- To smite or lay violent hands upon : other i  
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- By 11 Hen. 7. c. 1. it is declared, that all sub-  
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420

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421

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ib.

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ib.

By 4 &amp; 5 Will. &amp; Mary, c. 4. personating bail, before commissioners authorized to take bail in actions depending in the courts at Westminster, by which the person personated shall be made liable to pay, &amp;c. is felony.

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Barristers are liable to punishment for any deceitful practices. 461. s. 31

By stat. West. 1. c. 29. if they *beguile* the court or the party, they shall be *disbarred* and imprisoned &c. *ib.*

And counsellors not sworn are as much with this act as serjeants, &c. *ib.* s. 3

### BASTARD.

By 21 Jac. 1. c. 27. if a woman be delivered a bastard child, and privately endeavour to conceal the death of it, so as to prevent it being known whether it be born alive or not, except the mother can prove, by one witness that such child was born dead, she was suffer as in case of murder.

But evidence upon the same, as in other cases but jury may find the mother concealed the birth.

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By 34 Edw. 3. c. 1. justices of peace are required to take of all them that be not of good fame sufficient surety for their good behaviour. 485

But this means of such only as intend to break the peace. *ib.* s. 2

Or those who by quarrelsome behaviour give just suspicion of their readiness to break the peace. *ib.*

As for offences *contra bonos mores*, as frequenting bawdy-houses, speaking contemptuously of a magistrate, though not in the execution of his office; or of a constable or other inferior officer in the discharge of his duty. *ib.*

But this surety cannot be required for barely calling another names. 486. s. 3

This power in the magistrate is discretionary, and he may take the surety of all whose behaviour involves them in the description of persons of *evil fame*. *ib.* s. 4

But if he commit for want of surety, he must shew the cause with convenient certainty. *ib.*

Instances in which this surety has been taken. *ib.* (N) 1

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### BIGAMY.

By 1 Jac. 1. c. 11. any married person who shall marry another person, the former husband or wife being alive, shall be guilty of felony. 685

The offenders may be tried in the county where they are apprehended. *ib.*

If the husband or wife shall be continually remaining beyond the seas by the space of seven years together. *ib.* s. 2

Or shall be absent the one from the other for the space of seven years, within the kingdom, the one not knowing the other to be alive within that time. *ib.*

Or if either of them shall be divorced, or the marriage declared void by the spiritual court at the time of the second marriage. *ib.* s. 3.

Or if either of the parties are within the age of consent. *ib.*

But this offence shall not incur attainder, corruption of blood, loss of dower, or disherison. *ib.* s. 4

A divorce *à vinculo matrimonii*, and also *à mensâ et thoro causâ adulterii* or *sevitæ*, is within the exception of this statute. *ib.* s. 5

Where one of the parties is within the age of consent, the other is thereby also exempted from the felony. *ib.* s. 6

If the first marriage be beyond sea, and the latter in *England*, the party may be indicted for it in *England*. *ib.* s. 7

And *quare*, if he may not, though the first marriage be in *England*, and the second beyond sea. 686

The first and true wife is not an admissible evidence against her husband. *ib.*

The production of the sentence in a suit for jactitation does not preclude the proof of the marriage. *ib.*

If such a sentence were conclusive evidence against the fact of marriage, yet it may be impeached by fraud or collusion. *ib.*

How the offence must be proved. *ib.* (N)

### BISHOP.

See PRÆMUNIRE. POPEY.

Every bishop may convict for heresy within his own diocese, and proceed to punish by church censures. 354

But no other spiritual judge can. *ib.*

By 24 Hen. 8. c. 9. the archbishop of either province may cite the offender, if the immediate ordinary consents, or if he neglects his duty. *ib.*

By 11 & 12 Will. 3. c. 4. whoever shall convict a *popish bishop* of saying mass shall receive £100, and the offender be condemned to perpetual imprisonment. But this is repealed by 18 Geo. 3. c. 60. provided the offender shall have taken the oath therein prescribed before any prosecution commenced. 394

And by 31 Geo. 3. c. 32. Roman Catholic bishops, on taking the appointed test, may hold mass. *ib.*

BLACK

## BLACK ACT.

By 9 Geo. 1. c. 22. it is felony without clergy to appear, ARMED AND DISGUISED, in any inclosed grounds where deer, hares, or conies are usually kept. 179. (N)

Or in any high road, open heath, common, or down. *ib.*

Or to hunt, wound, destroy, or steal any fallow deer. *ib.*

Or to rob any warren where hares or conies are usually kept. *ib.*

Or to steal or take away any fish out of any river or pond. *ib.*

It is also felony without clergy, whether armed and disguised or not, to hunt, wound, destroy, or steal, any fallow deer in any of the king's inclosed parks or forests. *ib.*

Or to break down the head of any fish-pond, whereby the fish shall be lost or destroyed. 180

Or to kill, maim, or wound any cattle. *ib.*

Or to cut down or destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit. *ib.*

Or to set fire to any house, barn, out-house, or to any hovel, cock, mew, a stack of corn, straw, hay, or wood. *ib.*

Or to maliciously shoot at any person in any dwelling-house or other place. *ib.*

Or to send any letter without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing. *ib.*

Or to forcibly rescue any person in custody for any of the above offences. *ib.*

Or to procure, by gift or promise of reward, any person to join in committing any such unlawful act. *ib.*

## BLACK LEAD.

By 25 Geo. 2. c. 10. to enter a black lead mine by force, and take away wad, cawke, or lead, &c. their aiders and abettors, shall be transported for seven years, or whipped. 170

## BLASPHEMY.

## See RELIGION.

All blasphemies against God, or contumelious reproaches of our Saviour, are offences at common law, punishable by the temporal judges with fine, imprisonment, and infamy. 358

## BLACK MAIL.

By 43 Eliz. c. 13. whoever, inhabiting near the borders of Cumberland, Westmoreland, or Durham, shall take any persons or goods, and imprison them till ransom made, &c. &c. shall suffer death without clergy. 534

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By 7 & 8 Will. 3. bonds given to procure the return of a member to parliament are void; and the giver thereof shall forfeit £300. 417. s. 8

A bond by a deputy to pay a certain sum at all events, is bribery, and void. 416

But not a bond to pay half the profits, or a certain sum out of the profits of the office for a deputation. 416. s. 5

The obligee may raise out *libris* and insert *marcis*, without being guilty of forgery. 264

To make a bond for £500 seem to be a bond for £5000, by adding another cypher, was forgery at common law. *ib.*

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## BRAWLING.

## See AFFRAYS.

By 5 & 6 Edw. 6. c. 4. whoever shall brawl, &c. in a church or church-yard, the ordinary, on proof by two witnesses, may suspend a layman *ab ingressu ecclesie*, and a clerk from *ministration*. 492. s. 24

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By 4 Hen. 4. c. 5. no sheriff shall let his bailiwick to farm. *ib.*

By 5 & 6 Edw. 6. c. 16. whoever shall procure an office by bribery shall be disabled to hold, &c. *ib.*

No office in fee is within this act; but the offices of chancellor, register, or commissary of the ecclesiastical courts, are. 416. s. 4.

No person once disabled can be again restored by any grant or dispensation. *ib.* s. 5.

A colourable bond by a deputy of an office is void; 7.

- void; but a bond to pay half the sum certain, for a deputation, is good. 416
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- Anciently, bribery in a Judge was punished as treason; and now all bribery is liable to deprivation, fine, and imprisonment. *ib.* s. 6
- The *Earl of Middlesex* fined £5000 for bribery *ib.* s. 7
- An attempt to influence another by means of a bribe is highly criminal; and offering money to a privy-councillor for an office is punishable by information. 417. (N)
- By 7 & 8 Will. 3. c. 7. all securities to procure a seat in parliament is void; and the giving of such a bribe incurs a penalty of £300. *ib.* s. 8
- But if the election is void, no action lies for this penalty. *ib. notis.*
- By 2 Geo. 2. c. 24. candidates or voters giving or receiving a bribe for a vote at election: forfeit £500, &c. *ib.* s. 9.
- But if the offender, within twelve months, discover another offender, so as he be convicted, the discoverer not having himself been previously convicted, he is indemnified; but no prosecution shall be after two years. *ib.* s. 10
- This statute does not take away the common-law process by indictment or information. *ib.* (N) 4
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- And if a particular district bound to repair one kind of bridge, build another kind, of more general utility, the county shall repair it. 707
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- or a, If the defendant traverse the charge of repair, the attorney-general may take a traverse upon the traverse, and surmise, that the defendants are bound to repair, but no inhabitant shall be upon the jury. 707. s. 5, 6
- The indictment must allege the kind of bridge, and if the obligation arises from tenure, it must state where the lands lie. *ib.*
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- Where it cannot be known who are bound to repair, bridges without a city or town corporate shall be repaired by the county; if within, then by the city or town; and if the bridge shall be part in one city or county and part in another, each shall repair the part accordingly. *ib.* s. 8
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- By 1 Ann. c. 18. the sessions, upon any decayed bridge being presented, may levy a tax for the repair. *ib.* s. 26
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- By 6 & 7 Will. 3. c. 17. none shall cast ingots of silver, in imitation of Spanish bars, on pain of £500. 38
- None shall export any molten silver, without being marked at *Goldsmith's Hall*, and a certificate from one of the wardens, that oath had been

been made by the owner and one witness, that the same was lawful silver, &c. 38  
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 The certificate to be *circumstantially* certified to the commissioners of customs, before any *cocket* shall be granted. 40  
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## BURGLARY.

Is a felony at common law, in breaking and entering the *mansion-house* of another in the night *with intent* to commit felony. Ch. 17. p. 129  
 The word *noctanter*, which is absolutely necessary in every indictment for burglary, is satisfied by the degree of darkness which may prevent the offender's face from being known. 130. s. 2.  
 There must be both an actual breaking, and an entry, to complete this offence; for it must be laid *fregit et intravit*, which will not be satisfied, except in some special cases, by the notional breaking implied by law in every trespass. *ib.* s. 3.  
 Decision on breaking, &c. *ib.* (N)  
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 Or if he had assaulted the house, with intent to rob, and the owner had opened the door, and thereupon he had entered, it is burglary. *ib.*  
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 So also, with the same intent, to take lodgings, and then to fall upon the landlord. *ib.*  
 Or under pretence of searching for felons to obtain entrance by authority of a constable. *ib.*  
 By 12 Ann. c. 7. to enter a house by night or day with a felonious intent, without breaking it, and to break out of it in the night, is burglary. 132  
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But the thing with which the entry is made, must be introduced for the purpose of committing the felony; and therefore where a center bit was used for breaking through a door which it had actually perforated, yet as it did not appear that any hand or instrument had entered for the purpose of committing the felony, it was held insufficient. *ib.*

Those who watch on the outside while others enter, are equally guilty, though they never enter at all. *ib.*

So if a servant who is in the house open the door feloniously for the thief to enter, both of them are guilty of burglary. *ib.*

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A house wherein a man only dwells for part of the year, or which he has actually hired, but not moved into; or a chamber in an inn of court, or a house hired by a man's wife for her separate residence without his knowledge, for it is the husband's house; are all sufficient to satisfy the words *domus mansionalis*. *ib.*

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#### See COIN.

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By 18 Eliz. c. 1. whoever, *for lucre*, shall diminish, lighten, &c. &c. any of the monies as aforesaid, shall be guilty of high treason, lose goods, &c. &c. and lands during life, but no corruption of blood. *ib.* s. 62

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So also are the authorized *minters*, if they coin it of baser alloy than the standard. *ib.*

Receivers and comforters also are equally guilty, but clippers are not within *this act*. *ib.*

But to complete the crime, the counterfeiting must be such as to render the coin passable. 25. (N)

And uttering false money is neither treason nor misprision thereof within *this act*. 20. s. 56

And only gold and silver coined within the realm, by the king's authority, is "the king's money." *ib.* s. 57

But by 1 Mar. c. 6. to counterfeit the gold or silver coin, *not of the realm*, made current *by consent of the crown*, or to aid or abet therein, is high treason. 21. s. 59

And by 14 Eliz. c. 3. to counterfeit gold or silver coin, not of the realm, nor permitted to be current, or to aid or abet therein, is misprision of treason. *ib.* s. 60

By 5 Eliz. c. 11. clipping, washing, rounding, or filing, for lucre or gain, *any of the proper monies of this realm*, or of any other realm made current *by proclamation*, or aiding therein, is declared high treason. *ib.* s. 61

By 18 Eliz. c. 1. to impair, diminish, falsify, scale, or lighten, by any art or means, for *lucre or gain*, any *such monies*, or to aid or consent thereto, is high treason, with loss of goods absolutely, lands during life only, but no corruption or loss of dower. *ib.* s. 62

By 8 & 9 Will. 3. c. 26. whoever, except the minters, shall make, &c. any puncheon, counterpuncheon, matrix, stamp, dye, pattern, or mould, in or upon which shall be made, or which will make, the figure, stamp, resemblance, &c. of both or either of the sides of any current gold or silver coin, shall be guilty of high treason. *ib.* s. 63

Whoever shall make or mend, &c. any edger, or edging tool, instrument, or engine, not of common use in any trade, but contrived for marking the edges of money, with such letters or grainings as those on money coined in the mint, shall be guilty of high treason. 23

Whoever shall make or mend, &c. any press for coinage, or any cutting engine, for making blanks, by force of a screw, out of flattened bars of gold or silver, shall be guilty of high treason. *ib.*

Whoever shall *knowingly* have any such puncheon, counterpuncheon, matrix, stamp, dye, edger, cutting instrument, or other tool or instrument before mentioned, shall be guilty of high treason. *ib.*

The words "pattern or mould" are omitted in the above clause; but it has been determined, that they are comprized in the words "tool or instrument;" and that the *special term* is sufficient in an indictment, without averring the thing to be a tool or instrument within the act. 24

It is also determined, that if the *stamp* of the coin be impressed or formed in, or upon any of the instruments enumerated in the act, it is immaterial whether it be laid in the indictment as an instrument on which the resemblance of the coin is made, or an instrument which will make the resemblance. But it is better to lay the fact according to the statute. 23

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By 7 Ann. c. 25. prosecutions upon the above statute, for making, &c. the tools or instruments therein prohibited, or for milling the edges of money, shall be commenced within six months. 2

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Or to mark the edges of any of the current diminished, or counterfeit coin of the kingdom with the usual letters or grainings, or to counsel or assist therein, is high treason. 22

Whoever shall colour, gild, or case over, with gold or silver, or with any wash, or material producing the colour of gold or silver, any of the current coin, or blanks of base metal of fit size to be coined into counterfeited mill money, or shall aid or abet therein, are declared guilty of high treason. *ib.*

It has been adjudged immaterial whether the colouring be put on, or made to arise out of the subject coloured. *ib.*

By 15 Geo. 2. c. 28. to wash, gild, or colour, or to add to, or alter the impression of any shilling or sixpence real or counterfeited, with intent to make them resemble either a guinea or half guinea, is high treason. 26

So also to file, alter, wash, or colour any half-penny or farthing with intent to make them respectively resemble either a shilling or a sixpence, is high treason. *ib.*

Counsellors, aiders, abettors and procurers are within this statute. *ib.*

By 1 & 2 Ph. & Mary, c. 11. to bring into the realm money, counterfeit to foreign coin current here, is high treason. *ib.*

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And *quare*, if the money need to be actually merchandised with, or paid away. 27

The standard of coin is 2 car. copper to 22 car. of gold, 18 dwts. copper to 11 oz. 2 dwts. of silver. 43

The standard can only be altered by parliament. *ib.*

By 15 Geo. 2. c. 28. knowingly to utter any false or counterfeit money incurs, for the first offence, six months imprisonment and surety for six months more. For the second offence, two years imprisonment and surety for two years. The third offence is death. 44

To tender in payment any such money twice within ten days, or to have one or more pieces thereof in custody, besides what is tendered, is, for the first offence, two years imprisonment and two years security. The second offence is death without clergy. 45

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By 2 Geo. 2. c. 21. principals and accessories to a murder, where the stroke, &c. is at sea, and the death on land, or *è converso*, may be tried in the county where either the death or stroke shall be. 94

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Nor for receiving stolen goods without her husband's privity. 4. (N) 7.

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A common river is a public highway. 696. s. 1  
Every way common to all subjects from town to town is a public highway. *ib*

But a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, is a private way, and not a highway. 697

The building of a street is a dedication of the highway to the public; but the soil still remains in the owner. 697

If a highway through an open field be impassable, the people may go by outlets, even over corn sown thereon. *ib*. s. 2

The grantee of a way may remove obstructions therein. *ib*.

But he cannot dig trenches to let off water from the way, which the grantor has caused; for he has no interest in the soil. *ib*.

But he may have an action for spoiling the way; and perhaps may go on an outlet of the wrong doer. *ib*.

If a private way be spoiled by the grantee he shall repair it, and not the grantor, unless the grantor has bound himself so to do. *ib*.

An ancient highway cannot be changed without an *ad quod damnum* and inquisition thereof. *ib*. s. 3

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Neither are inhabitants bound to watch, answer for robbing in, or to repair *such* new road. *ib*.

But if a river change its course, the highway continues in the new channel, in the same manner as in the old. *ib*.

The owner of land through which a road runs is obliged to repair, if he incloses. 699

Generally, the occupiers of lands are bound to repair the highways in the parish where such lands lie. 698. s. 5

But the tenants whose lands adjoin the roads are bound to scour their ditches. *ib*.

Private persons may be burthened to repair highways, either in respect to the occupation of lands, or by prescription. *ib*.

In respect to lands; as where the owner incloses the lands through which the highway lies. 699

In an *ad quod damnum*, the parishioners shall repair the new road. *ib*.

But another parish, who gain no benefit from the change of the road, shall not repair, although it goes through part of such parish; but the person suing out the writ and his heirs shall repair such part of the road. 699

A corporation may be bound to repair by force of a general prescription. *ib*. s. 8

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There must be no malice covered under the pretence of necessity. *ib.* s. 2

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Justifiable homicide is either in the due execution or advancement of public justice, or in the just defence of a man's person, house, or goods. 80

The judgment by which a person is executed must be given by one who has jurisdiction, or it will not justify either the judge or the officer. *ib.* s. 4

If common pleas give judgment of death, or justices of peace award execution in treason, and it is done, both judges and officers are guilty of felony. *ib.* s. 5

But if justices of peace, on indictment of trespass, arraign for felony, and the prisoner is executed, the justices only, and not the officers, are guilty. *ib.* s. 6

The judgment must be executed by the lawful officer. *ib.* s. 7

If the judge who sentences, or any private person, or even the officer without lawful warrant, executes an *attainted person*, they are (contrary to former opinions) guilty of felony. *ib.* s. 8, 9

The execution must be pursuant of and warranted by the judgment. 81. s. 10

But the king's warrant may remit the ignominious part of the punishment, and the officer is justified in doing execution accordingly. *ib.* (N. 1)

Any person may justify killing another who has been guilty of felony, and cannot otherwise be taken. *ib.* s. 11

So an officer may justify the killing an innocent person indicted for felony, if he cannot otherwise be taken. *ib.* s. 12

If a criminal, endeavouring to break gaol, assault his gaoler, he may be lawfully killed by him. *ib.* s. 13

Rioters, &c. resisting the endeavour of a justice to arrest them, the killing them may be justified. *ib.* s. 14

So also may a private person, in defence of himself against them. *ib.*

And so perhaps if he cannot otherwise suppress them. 81

A stranger assaulted by combatants whom he endeavoured to part, who kills one of them, may justify it, if they knew his interposition was for that purpose. *ib.* (N. 2)

Trespassers in deer parks, &c. not surrendering to the keeper, may be justly slain by him, by force of the statute 21 Edw. 1. c. 2, 3, and 4 Will. & Mary, c. 10. *ib.* s. 15

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If a sheriff, endeavouring to retake upon an escape in civil process, kills the person in the *affray*, it is justifiable. 82. s. 17

The officer in such a case is not bound to give back. *ib.* s. 18

But no private person can justify homicide in arresting a man on civil process, as he may in felony. *ib.* s. 19

Nor can the sheriff lawfully kill those who barely fly. *ib.* s. 20

Killing a wrong-doer in defence of a man's person, house, or goods, may be justified. *ib.* s. 21

As where a man kills one on the highway who assaults to rob or murder him. *ib.*

A woman may justify killing the man who attempts to ravish her. *ib.*

A servant who finds his master slain, and apprehends the like events to himself, may justify killing the murderer. *ib.*

A parent or a husband may justify killing the forcible ravisher of his wife or daughter's virtue. *ib.* (N. 3)

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And it is no excuse that the deceased struck first;

or that the killer had often declined to meet him; and was only prevailed upon by his importunity; or that he only intended to vindicate his reputation; or that he only meant to disarm his adversary. 96. s. 21

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By 3 Jac. 1. c. 5. if the children of any *English* subject not being mariners, &c. &c. shall be sent abroad to prevent their good education in *England*, they shall be disabled, &c. unless they take the oath of obedience, &c. and the person sending such child shall forfeit 100*l.* *ib.*

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### EMBEZZLEMENT.

By 31 Eliz. c. 4. if any person having the charge of the king's stores, shall embezzle the same to the value of 20*s.* he shall be guilty of felony. 50

By 22 Car. 2. c. 5. the benefit of clergy is taken from this offence, but restored by 4 Geo. 4. c. 5. *ib.*

By 3 and 4 Will. and Mary, c. 9. if any person shall take away the furniture of their lodging, with intent to embezzle it, they shall suffer as in case of felony. 153

By 21 Hen. 8. c. 7. if any servant shall embezzle his master's jewels, money, goods, &c. intrusted to his care, to the amount of 40*s.* he shall be guilty of felony. (*Vide* LARCENY.) 155

By 15 Geo. 2. c. 13. if any officer of the bank

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But the entry made, or *thing* introduced, must be for the purpose of committing felony. *ib.*

Therefore an entry made with an instrument for the purpose of breaking, and not for the felonious purpose, is not such an *entry* as will satisfy the word *intravit*. *ib.*

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But they cannot be apprehended upon *excommunicato capiendo*. 388. s. 6

By 5 & 6 Edw. 6. c. 4. whoever shall smite or lay violent hands upon another in a church or churchyard shall *ipso facto* be deemed excommunicate. 493. s. 25

And whoever shall maliciously strike another with any weapon in a church or churchyard, or draw the same with intent so to strike, shall, on conviction as the statute directs, have one of his ears cut off, and stand *ipso facto* excommunicated. *ib.* s. 26

But notwithstanding the words *ipso facto*, there must be either a precedent conviction at law, transmitted to the ordinary, or else the excommunication must be declared in the spiritual court, on *proof of the offence* there. 493. s. 26  
Excommunication must always appear judicially, otherwise there can be no absolution. *ib.* s. 27

### EXCUSABLE HOMICIDE.

Excusable homicide is either *per infortunium* or *se defendendo*. 85

*PER INFORTUNUM* is by misadventure, where a man, in doing a lawful act, without an injurious intention, happens to kill another. *ib.* s. 1  
As where the head of a hatchet flies off and kills. *ib.* s. 2

Or where a horse whipped by a third person, runs over a child. *ib.* s. 3

Or where a workman, after proper notice, flings timber from a house, &c. *ib.* s. 4

Or where death ensues from moderate correction, &c. *ib.* s. 5

Or where an arrow glances and happens to kill. *ib.* s. 6

Or where death happens in playing at foot-ball. *ib.* s. 7

Or where one kills another in fighting at *barriers* by the king's command. *ib.* s. 8

Or where the gun of a stranger attending a game-keeper, who is warding off poachers from the ground of a third person, and the gun accidentally goes off and kills one of the poachers, for the duty of the game-keeper will authorize the trespass of the stranger. 86

*SE DEFENDENDO* is where one who has no other possible means of saving his life from the force of a sudden attack kills the person by whom he is reduced to such an inevitable necessity. 87. s. 13

And he who, on an assault, retreats as far as safety will permit, and then kills his assailant, is justified to act upon unavoidable necessity. *ib.* s. 14

So also, if his situation be such, either from the violence of the assault, or from the nature of the place, that he cannot retreat without endangering his life. *ib.*

And though he wound the assailant in retreating, yet if he give him no mortal wound, till his further retreat is stopped, it is only *se defendendo*. *ib.* s. 15

An officer resisted in the execution of his duty, and a private person feloniously attacked on the highway, may justify the killing without giving back at all. *ib.* s. 16

And it is said, though even he who gives another the first blow, without malice, and afterwards do what he can to avoid killing him, is not guilty of felony.—*Sed quare.* *ib.* s. 17

Homicide *per infortunium* and *se defendendo* are not felonies, were always bailable by the *King's Bench*, &c. and never punishable with the loss of life. 79. s. 20

They are not bailable by *justices of the peace*, but the offenders must be committed till the next assizes. 88. s. 23

These offences cannot be justified by special pleading,

pleading, but the special matter may be given in evidence on *not guilty*. 86. s. 25  
 If the offender be acquitted of the indictment, or found not guilty on a special verdict, he shall be discharged upon bail, and forfeit his goods. *ib.*  
 But that by removing the record by *certiorari* into chancery, he shall be pardoned of course, without waiting for the king's warrant. *ib.*

### EXECUTION.

On the conviction of an infant within the years of discretion, for a capital offence, the judges will, in discretion, respite the execution in order to procure a pardon. 4. s. 8.  
 If the common pleas, on an appeal of death, or justices of the peace on an indictment of treason, award execution, and the execution is accordingly done, the judges who award, and the officer who executes, are guilty of felony. 80. s. 5  
 But in trespass, if the justices of peace arraign for felony, and award execution, the justice only, and not the officer, is guilty. *ib.* s. 6  
 Execution must be done by the lawful officer. *ib.* s. 7  
 If a private person do execution, or if the proper officer himself do it without lawful command, it is felony. *ib.* s. 9  
 The execution must be pursuant of, and warranted by the judgment; therefore if a sheriff behead a man where that is no part of the sentence, he is guilty of felony. 81. s. 10  
 The king cannot vary the execution so as to aggravate the punishment. *ib.* (N) 1  
 How homicide, in execution of public justice, is justified. *ib.*  
 If a convict becomes *non compos* after conviction, he shall not be executed. 3. s. 3

### EXPORTATION.

See SMUGGLING.

Penalty for exporting wool. 551 to 586  
 By 19 Geo. 2. c. 34. and 52 Geo. 3. c. 143. if any persons armed, to the number of three, shall be assembled to assist in the illegal exportation of wool, or shall rescue, &c. or if any person shall have his face disguised, when passing with such goods, or shall obstruct the seizing, &c. he shall be guilty of felony without clergy. 665 & 668 (N)  
 Exporting of bullion. 37 to 41  
 If any broker, not a goldsmith or refiner, shall buy or sell any bullion, or molten silver, he shall be imprisoned six months. 41  
 No bullion to be entered or shipped, but in the name of the true owner, proprietor, or importer, on pain of forfeiture. 39

### EXPORTING TOOLS.

The several statutes creating the offence of exporting tools enumerated. 595. 612

### EXTORTION

Is any oppression, but especially an officer ob-

taining money colourably, where none, or not so much, is due, or where it is not yet due. 418  
 No fees shall be taken but of the king by any officer concerned in the administration or execution of justice, &c. *ib.* s. 2  
 A prescription by a clerk of the market, claiming fees for the view of weights and measures, is void. *ib.*  
 The danger of oppression from officers' ancient fees, as the bar fee by the sheriff, &c. which they claimed. 419. s. 3  
 An enumeration of the statutes by which their fees are now settled. *ib.* (N) 1  
 Officers guilty of extortion, who take other fees than they are allowed. *ib.* s. 4  
 A promise to pay them more than they are intitled to take is void. *ib.*  
 It is extortion to oblige an executor to prove a will twice over, and to take fees thereon; or to procure a gratuity to become bail for a prisoner; or to arrest a man and procure a release; or to obtain money from a prisoner by any colour of office. *ib.* (N) 2  
 It is extortion for a miller to take more than is due by custom; or for a commissary to take more than his right for absolution; or a ferryman for ferrying; or to force an exorbitant price for places at a fair; or in an under-sheriff to refuse execution of process without his fees; or to take a bond for them; or for a coroner to refuse a view. *ib.* (N)  
 Extortion, by the common law, is punishable with deprivation, fine, and imprisonment. And by the statute of Westminster, the offender shall yield twice as much as he takes. 420  
 The indictment or information must state the fact particularly. *ib.* (N)  
 The sessions may try the indictment. *ib.* (N)  
 An action lies for the double value. *ib.* (N)  
 Proof of the smallest possible taking is sufficient; for it is the taking, and not the contract, which constitutes the crime. *ib.* (N)  
 Aiders are principals, and the offence may be laid in any county. *ib.* (N)

### EYRE.

By the 25 Edw. 3. c. 2. it is high treason to slay the justices in *eyre* or justices of assize assigned to hear, &c. being in their places during their offices. 19  
 But not attempt to kill them, or the actual wounding, unless death ensue, will amount to this crime. *ib.*

### FAIRS.

By 5 & 6 Edw. 6. c. 9. to break open a booth or tent in any market or fair, the owner, his wife, &c. being therein, is felony without clergy. 308  
 By 27 Hen. 6. c. 5. no fair shall be held on the principal festivals, Good Friday, or on any Sunday, except the fairs in harvest. 358

### FALSE NEWS.

Spreading false news is an indictable offence. 64. s. 6  
**FALSE**

## FALSE TOKENS.

## See CHEAT.

- By 33 Hen. 8. c. 1. falsely to obtain the property of another by means of any privy false token is a misdemeanor. 319  
 What shall be considered a privy false token. 320

## FAME.

- By 34 Edw. 3. c. 1. justices of peace are empowered to restrain and take (*inter alia*) of all them that be *not of good fame* sufficient surety for their good behaviour. 485  
 It has been thought that this means only such as are *defamed* and justly suspected of an intention to break the peace. *ib. s. 2*  
 But evil fame as properly includes persons of scandalous behaviour in other respects as those who give suspicion of their readiness to break the peace. *ib.*  
 Therefore for those causes of scandal which give a man a *bad fame*, as being *contra bonos mores* only, may be bound to his good behaviour. *ib.*  
 And also all persons whose misbehaviour may reasonably be intended to bring them within the meaning of persons of *evil fame*, the great latitude of which leaves it to the judgment of the magistrate. *ib.*  
 A libel is any malicious defamation expressed in any manner so as to be generally understood. 542

## FARTHING.

## See HALF-PENNY.

- It is not high treason to coin or counterfeit brass farthings. 20. s. 57  
 To alter a farthing with intent to make it pass for a sixpence is high treason. 26  
 By 15 Geo. 2. c. 28. whoever shall coin or counterfeit any brass or copper money called a halfpenny or farthing, their aiders, &c. shall suffer two years imprisonment, and find surety for two years more. 44  
 By 11 Geo. 3. c. 40. whoever shall coin or counterfeit a halfpenny or a farthing, his aiders, &c. shall be guilty of felony. 46. s. 26  
 Whoever shall buy, sell, take, receive, or put off any counterfeit copper money not cut in pieces, for lower than its nominal value, shall be guilty of felony. 44

## FAST DAYS.

- By 2 & 3 Edw. 6. c. 19. and 5 Eliz. c. 5. it is made penal to affirm that any eating of fish or forbearing of flesh mentioned therein is necessary to salvation, or that it is the service of God. 365. s. 34  
 By 27 Hen. 6. c. 5. no fair or market shall be held on the principal fast days, except the fair *Sundays* in harvest, on pain of forfeiting the goods exposed to sale. 358

## PEAR.

## See ROBBERY.

- Larceny from the person by *putting in fear* is called robbery. 212

Money, delivered in consequence of an oath compelled by fear is robbery. 213. s. 1

Fear is the distinguishing ingredient between robbery and other larcenies. 214

Therefore if the fear be exerted subsequent to the *taking*, it is larceny, but not robbery. *ib. s. 7*

So where no fear is impressed for the purpose of obtaining the property. *ib.*

But it is not necessary that the fact of actual fear should either be laid in the indictment or proved upon the trial. *ib. s. 8*

Proof of such acts as may reasonably be supposed to excite fear and apprehension in the human mind are sufficient, if the party parts with his money under the influence of them. 215

For *in odium spoliatoris* the law will presume fear where there appears a just ground for it. 215. s. 10

How fear is properly expressed in an indictment. *ib.*

## FELONY DE SE.

- In what cases a man shall be said to be *felo de se*. 77  
 What he shall forfeit for this offence. 78

## FELONY.

Capital offences, by the common law, come generally under the title of felony; which signifies *quodlibet crimen felico animo perpetratum*. c. 7

It can be expressed by no *periphrasis* without the word *felonice*. 71. s. 1

Felony is included in high treason; and a pardon of felony pardons treason, if the word *proditorie* be omitted. *ib. s. 2*

It is always accompanied with an evil intention. 72. s. 3.

It shall not be imputed to a mere mistake *mis-animadversion*. *ib.*

Anciently the bare *intention* to commit felony was considered as felonious. *ib. s. 2*

But now felony shall not be imputed to a bare intention to commit it. *ib. s. 3.*

But the party may be very severely fined for such an intention. *ib.*

Where a statute decrees an offence to undergo judgment of life and member, the offence becomes a felony, though that word be omitted. *ib.*

But felony shall not be implied from any doubtful or ambiguous words in a statute. *ib. s. 6*

Where a statute makes a second offence felony, or subject to a heavier punishment than the first, it must be after conviction. *ib.*

What shall be incidentally implied in every statute which makes an offence felony. 73

If one commit an offence made felony by statute and the statute be repealed, he cannot be punished for the felony. *ib.*

## FELONIOUS HOMICIDE.

## See MURDER, MANSLAUGHTER.

That without malice is called manslaughter, and sometimes chance medley. 89. s. 1

This is such a killing as happens upon a sudden quarrel, or in the commission of an unlawful act,

act, without any deliberate intention of doing mischief. 89  
There can be no accessories to manslaughter, because it must be done without premeditation. *ib.*

## FEME COVERT.

A *feme covert*, favoured in respect of her husband's authority over her, shall not be punished for committing a bare theft in company with or by coercion of her husband. 4

This exemption extends to burglary and perhaps to robbery. 4. (N) 7

A *feme covert* shall not be deemed an accessory to a felony for receiving her husband who has been guilty of it. 4. s. 10

But if a *feme covert* commit a theft of her own voluntary act, or by the *bare* command of her husband (*quære*), or be guilty of treason, murder, or (*quære*) robbery, in company with or by coercion of her husband, she is punishable. 4. s. 11

Or if she receive stolen goods without her husband's privity, or if he, knowing it, disclaims her, she may be punished as accessory. *ib.* (N) 7

A wife may be indicted together and condemned to the pillory with her husband for keeping a bawdy-house. 5. s. 12

Generally a *feme covert* shall answer for any offence not capital. 5. s. 13

If the offence be of a nature which she may commit alone, the husband need not be joined in the indictment, provided he is no way privy.

But for a forfeiture, the husband may be made liable by joining him in the prosecution. *ib.*

The husband is not liable to pay a forfeiture recovered against his wife upon an indictment. 380

## FENCES.

By 6 Geo. 1. c. 16. to destroy fences round woods or plantations is three months' correction, and the parish liable to the damage. 325

By 16 Geo. 3. c. 30. to destroy the fences of deer parks is transportation. 326

By 9 Geo. 3. c. 29. to destroy fences of waste lands inclosed, transportation. 327

## FERÆ NATURÆ.

Larceny may be committed of animals *feræ nature*, if they be fit for food and reduced to tameness, and known by the offender to be so. 149

## FIRE ENGINE.

By 9 Geo. 3. c. 29. to damage or destroy any fire engine belonging to any colliery, on conviction within eighteen months, incurs a penalty of transportation. 335

## FISH.

The offence of stealing fish 190  
Regulations respecting the preservation, sale and importation of fish. 654. 658

## FINGER.

Cutting off, or disabling, or weakening a man's hand or finger, is esteemed a *maim*. 107. s. 2

It is punishable with fine and imprisonment. *ib.*  
By 22 & 23 Car. 2. c. 1. to disable any limb or

member, with intention to maim and disfigure, is death without clergy. 108. s. 5

Cases on this statute. 109

## FOOTWAY.

See NUISANCE, HIGHWAY.

There are three kinds of ways: 1st. a footway; 2d. a pack and prime way, which is both a horse and a foot way; 3d. a cart way. 698  
A nuisance in a footway is punishable at the *leet*. *ib.*

## FORCIBLE ENTRY AND DETAINER.

By common law, a man, within proper time, might regain *his possession* by force; and he may now justify the re-taking of his *goods* wrongfully withheld. 495

But such a repossession of *lands* is now restrained. *ib.*

On an action for a forcible entry, if the defendant proves his title to the lands, &c. he shall not pay damages to the plaintiff for *the force*; but he may be punished as a disturber of the public peace. *ib.* s. 3

Indictment lies at common law for a forcible entry; but the actual force must be charged. *ib.* (N) 1

By 2 Edw. 3. if arms which strike a terror are used in making the entry, the persons authorized by that statute may seize the arms and imprison the offenders; but they cannot restate the party injured to his possession. 496. s. 5

By 5 Rich. 2. c. 7. whoever shall make entry into lands, with *strong hand*, and with multitude of people, shall suffer imprisonment. *ib.* s. 6

By 5 Rich. 2. c. 2. justices, with the power of the county, may commit such as hold forcibly after an entry made. *ib.* s. 7

And he shall make a record of the fact, which is not traversable, because he acts not as a minister, but as a judge. 497. s. 8

He may also assess the fine for the offence. *ib.*

But the commitment must be upon a *view* of the fact, or for want of finding sufficient sureties. *ib.*

If the party traverse the entry, or the force, or plead three years possession, the justice may summon a jury and try the traverse. *ib.*

By 8 Hen. 6. c. 9. justices are empowered to examine the offence, and put the party intitled into full possession. *ib.* s. 9. & 10

For which purpose they may direct the sheriff to impanel a jury, each having 40s. a year. 498. s. 11

Penalty on jurors or sheriffs neglecting their duty. *ib.*

This power extended to all magistrates. *ib.* s. 12

But this power shall not extend to dispossess those who have had possession for three years. *ib.* s. 13

By 31 Eliz. c. 11. this security confirmed, &c. the party may allege the three years peaceable occupation in bar of restitution. But the fact, on being traversed, may be tried by the justice, who may award costs, &c. *ib.* s. 14

If a lessee or copyholder be ousted, and the lessor, or lord, disseised, restitution to the lessee,

- or copyholder, is a reseisin of the freehold. 499. s. 15
- By 21 Jac. 1. c. 15. the Court may grant restitution to termors, copyholders, tenants by *elegit*, statute merchant and staple. *ib.* s. 16
- Quere*, If a tenant by the verge be within the statute. *ib.* s. 17
- A lessor who ejects his lessee, and is then forcibly put out of possession, is not within any of the statutes. 499. s. 17
- But in either of the last cases, the justice may remove the force and commit the offender. *ib.* s. 18
- What shall be esteemed an entry. *ib.* s. 19
- The bare trespass by a pretender to the lands, although armed, &c. unless he actually claim by circumstances of force and terror, is not an entry. 500. s. 20
- Aiders are principal offenders, although they do not actually enter. *ib.* s. 22
- One who continues forcibly, under a defeasible title, against him who has a right of entry, is within the statutes. *ib.* s. 23
- But not one who barely agrees to a forcible entry made to his use. *ib.* s. 24
- What entry is forcible. *ib.* s. 25
- It must be with actual *violence and terror*; not such as the law implies in trespass. 501. s. 26
- What degree of *violence* is necessary. *ib.*
- What circumstances will amount to *terror*. *ib.* s. 27
- What persons shall be adjudged forcible. 502 s. 30
- A forcible entry or detainer may be committed upon ecclesiastical possessions, as well as upon temporal, or incorporeal hereditaments, for which entry will lie; but not upon a way or easement. 502
- Who may be guilty of this offence. 503. s. 32
- What ought to be the form of a record, upon the statutes of forcible entry. 503. 507
- Of what kind of possession restitution is to be awarded. 507, 508. s. 45
- To whom and in what manner such restitution ought to be made. 508. *ib.*
- By whom and in what manner such restitution may be awarded and given. 508. s. 49, &c.
- How restitution should be barred by a continuance of possession for three years. 509. s. 53
- For what other causes such restitution may be stayed. 511. s. 58
- How such a restitution may be superseded before it is executed. *ib.* s. 61
- How such a restitution may be set aside after it is executed. 512. s. 63
- FORCIBLE MARRIAGE.**
- By 3 Hen. 7. c. 2. whoever shall take a maid, widow, or wife, against her will, their abettors, procurers, and knowing receivers, shall be reputed principal felons. 123
- Decisions on these statutes 124, 125
- FOREIGN PRINCE.**
- See ENLISTING.**
- Serving a foreign state. 47
- Summoning a man to appear and defend himself before a foreign prince, was anciently high treason. 7
- And writing letters to a foreign prince, inviting him to invade the realm, is now high treason. 9
- It is so high an offence to prefer the interest of a foreign prince, that it is criminal to do any thing which may incline a man so to do. 65. s. 3.
- FORFEITURE.**
- If the wife incur the forfeiture of a penal statute, the husband may be made a party to an action or information for the same. 5. s. 13
- An offender executed by virtue of the writ *de heretico comburendo*, forfeits neither land nor goods. 335
- The limitation of a forfeiture to the crown, in a statute, is mere surplus. 379. s. 33
- Whether a forfeiture is saved by the death of the party within the time limited for the payment of it. 367
- What shall be forfeited by *felo de se*. 78. s. 7
- The forfeiture is saved by a pardon before inquisition found. 78
- After inquisition, the forfeiture shall relate back to the time the mortal wound was given. *ib.*
- Nothing shall be forfeited as a deadand unless the party die within a year and a day. 75. s. 7.
- But if he die within the time, the forfeiture shall relate back to the time of the wound. 76
- FORGERY.**
- Forgery defined. 263. (N) 1
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- Forgery of official papers, securities and documents. 287
- Forgery 287

- Forgery of private papers, securities and documents. 298
- Forgery is either by the common law or statute. c. 21. p. 265
- At common law, it consists in falsely and fraudulently making or altering any matter of record or any other authentic matter of a public nature; as a parish register, any deed, or will 263. s. 1
- The punishment is fine, imprisonment, and any corporal punishment. ib.
- If a man make a feoffment to one, and afterwards make a feoffment to another of the same lands, of a date prior to the first, it is forgery 264. s. 2
- So also if he had passed only an equitable interest. ib. s. 2
- If a person, in drawing the will of another, insert legacies of his own head, it is forgery. 264
- If one finding another's name at the bottom of a letter causes the writing to be cut off, and a general release to be written over the name, and then takes off the seal and fixes it to the release, it is forgery. ib.
- To insert in an indictment the names of those against whom in truth it was not found, is forgery. ib.
- So also to make any fraudulent alteration of the form of a true deed in a material part of it. 265
- As by making a lease of the manor of Dale appear to be a lease of the manor of Sale, by changing the D into S. ib.
- Or by making a bond for £500 appear to be for £5000, by an additional cypher. ib.
- Sir Edward Coke's opinion, that a deed so altered is rather false than forged, controverted, and denied to be law. ib.
- For forgery does not so much consist in counterfeiting the hand and seal, as in endeavouring to give an appearance of truth to a mere deceit and falsity; and by force of such falsity, to give it an operation which in justice it ought not to have. ib. s. 2
- But a man who writes a deed in another's name, and seals it in his presence, and by his command, is not guilty of this offence. ib. s. 3
- Neither shall an obligee be punished for forgery who erases the word *libris* and inserts *marcis*; for it is alone prejudicial to himself. ib. s. 4
- But if it should appear that this alteration was to prejudice a third person, it is forgery; and otherwise it is a *misdeemeanour*. 265
- To write a will officiously is not forgery, although the testator becomes *non compos* before it be brought to him; for it is not writing without privacy, but giving an instrument a false appearance, that constitutes forgery. ib. s. 5
- Non-seizance, as by leaving a legacy out of a will, is not forgery. ib. s. 6
- But perhaps otherwise if the omission of one bequest cause a material alteration in the limitation of a bequest to another. ib.
- It is not material whether the forged instrument be made in such a manner that it were in truth what it is counterfeited for, it would be of validity or not. ib. s. 7
- All matters of record, from their high public importance, may become the subjects of forgery. 265. s. 8
- So also may a privy seal, a license from the *exchequer* to compound a debt, a certificate of holy orders, and a protection from a parliament-man. ib. s. 9
- It is unquestionable that a man may be guilty at common law by forging a deed; and most probably by forging a will; but this is not settled. ib. s. 10
- It is laid down generally, that the counterfeiting other writings of an inferior nature is not properly forgery (*vide* (N) 263). 266. s. 11
- The distinction is, that the counterfeiting of writings of an authentic public nature is in itself criminal, whether any third person be actually injured thereby or not; but that the counterfeiting of other writings of an inferior and private nature is no crime, unless some one receive a prejudice thereby. ib.

OF FORGERY BY STATUTES.

- By 5 Eliz. c. 14. whoever shall falsely forge any deed, charter, or writing sealed, court roll, or the will of any person in writing, to the intent that the estate, or freehold, or inheritance, to any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person therein, shall be molested, &c. or shall knowingly utter the same with the like intent, on conviction, by action or damages to the party grieved, shall pay double costs and damages, be set in the pillory, have his ears cut off, his nostrils slit and seared, forfeit all the profits of his lands, and suffer perpetual imprisonment. 298
- But the uttering shall not extend to any attorney, lawyer, or counsellor, who shews such deed in evidence for his client. 299
- And if such forgery be of any charter, deed, or writing, with intent to claim any estate or interest for a term of years in any premises not being copyhold—or any annuity in fee-simple, fee-tail, or for term of life or years—or if such forgery be of any obligation, bill obligatory, acquittance, release or discharge of any debt, account, &c. of any thing personal, the offender shall pay double damages, &c. and be set on the pillory as aforesaid, have one of his ears cut off, and suffer imprisonment for one year, &c. ib.
- And whoever shall be convicted of any of the said offences a second time, he shall be guilty of felony without benefit of clergy. ib. s. 14
- All justices of *oyer and terminer* and assize have jurisdiction over this offence. ib. s. 15
- A false customary of a copyhold manor is within the first branch of this act. 300. s. 17
- So also is a lease for years, or a grant of a rent-charge for years in the name of one who is seised of a freehold or inheritance. ib. s. 18
- The second branch of the act means only such forgeries as relate to an estate or interest in *esse* before. ib.
- A will of one possessed of such estate, mentioning a bequest thereof, is within the second branch,

- branch, although the wills are not mentioned. 300 s. 19
- The forgery of a lease of lands in *Ireland* is not at all within the statute. *ib.* s. 20
- Nor is a *deed* containing a gift of mere personal chattels. *ib.* s. 21
- But a statute merchant, or a recognizance in nature of statute staple, are within the meaning of the word *obligation*.—But a statute staple itself is not, for it does not require a seal. *ib.* s. 22
- To publish a deed, after *information* of its falsity, is an uttering within the act. *ib.* s. 23
- The double damages (*vide supra*) shall be governed by the penalty, and not by the true debt appearing in the condition. 301. s. 24
- A second conviction for a forgery of a different nature from the first, will make the offender guilty of the felony. *ib.* s. 25
- The prosecution must strictly pursue the words of the statute. *ib.* s. 26
- But an indictment setting forth that the writing was indented, without adding it was sealed, is sufficient. *ib.*
- A verdict finding *de transgression et forgeria predictus prout superius indictamento supponitur*, is sufficient. *ib.*
- FORNICATION.**
- All open lewdness, grossly scandalous, is punishable by the temporal judges, by fine and imprisonment, &c. 358
- FOREST.**
- If trespassers in any forest, &c. will not render themselves to the keepers, they may be slain by force of the statute *de malefactoribus in parciis*. 81. s. 15
- FORTUNE-TELLERS.**
- By 9 Geo. 2. c. 5. whoever shall undertake to tell fortunes, or pretend by crafty science to discover stolen goods, shall be imprisoned for one year, stand four times in the pillory, and find surety as the court shall think fit. 357
- By 17 Geo. 2. c. 5. all jugglers, fortune-tellers, &c. &c. shall be deemed rogues and vagabonds. *ib.*
- FREEHOLD.**
- The goods of which larceny may be committed, ought to be no way annexed to the freehold. 148. s. 34
- Therefore it is no larceny at common law to steal corn or grass growing, or apples on a tree, or lead on a church. *ib.*
- But by 43 Eliz. c. 7. to cut corn or grain growing, to rob orchards, to break the fences or trees therein, to the intent to take the same away, or to cut woods, underwoods, poles, &c. *not being felony by the laws of this realm*, is made punishable at discretion. 165
- By 15 Car. 2. c. 2. the houses of such offenders may be searched. 166
- By 1 Geo. 1. c. 48. to destroy any timber or fruit-tree, is fine and imprisonment. 327
- By 6 Geo. 1. c. 16. to destroy any wood sprigs, trees, poles, thorns, quicksets, &c. is liable to the same punishment. 325
- By 9 Geo. 1. c. 22. to destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit, is felony without clergy (but clergy restored by 4 Geo. 4. (N) ). 327
- By 6 Geo. 3. c. 36. whoever, *in the night*, shall damage or destroy any timber tree, &c. or any shrub or plant, of the value of 5s. &c. &c. shall be transported for seven years. *ib.*
- By 6 Geo. 3. c. 48. and 13 Geo. 3. c. 33. whoever shall deface or damage any timber tree, in any of the king's forests, shall forfeit £20, &c. for the first offence; £30, &c. for the second; and for the third, be transported for seven years. 328
- By 13 Geo. 3. c. 32. whoever shall steal or destroy any turnips, potatoes, cabbages, parsnips, pease, or carrots, growing in any garden; or by 31 Geo. 2. c. 35. any madder roots; shall forfeit 10s. 168, 169
- By 25 Geo. 2. c. 10. whoever shall break into a black-lead mine, or being there, shall steal any lead, cawke, &c. *may be* transported for seven years. 170
- By 4 Geo. 2. c. 32. and 21 Geo. 3. c. 68. whoever shall break, with intent to steal any lead, iron bar, iron grate, iron pallsadoes, or iron rail; or any copper, brass, or bell-metal utensil, or fixture, being fixed to any dwelling-house, &c. &c. he may be transported for seven years. 171
- Decisions on the above statutes. 173, 174
- GAMING.**
- All common gaming-houses are indictable as nuisances. 693. s. 6.
- By 10 & 11 Will. 3. c. 17. all mischievous games called lotteries, by (*inter alia*) dice, lots, cards, &c. are declared nuisances, and whoever shall keep such lottery shall forfeit £500, &c. 733
- By 9 Anne, c. 14. s. 8. to assault and beat any person on account of monies won by gaming, is forfeiture of goods and two years imprisonment. 116
- By 16 Car. 2. c. 7. to use any fraud or unlawful device, in playing at any pastime, or game, or by bearing a share in the stakes, or by betting on the side of such as shall play, incurs a forfeiture of treble the value. 726
- By 9 Anne, c. 14. if any person shall, by any fraud or shift, deceit, ill practice, &c. in playing at any of the games mentioned in the act, or by bearing stakes, or by betting, &c. win any sum of money, or other valuable thing, on conviction, by information or indictment, he shall forfeit five times the value, be deemed infamous, and suffer corporal punishment, as in cases of perjury. 727
- The offence of keeping a common gaming-house. 721. 726
- The offence of excessive gaming. 729. 733
- The offence of illegal horse-racing. 748
- Gaming in public funds. 743
- GAOLER.**

GAOLER.

To threaten or assault a gaoler for keeping a prisoner in safe custody, is a contempt of the law, and highly punishable by fine and imprisonment. 64. s. 14

If a criminal, in endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him *in the affray*. 81. s. 13

If a gaoler, by *duress* of imprisonment, compel a man to accuse an innocent person, who, on his evidence, is condemned and executed, this is homicide in the gaoler. 92. s. 7

A gaoler knowing a prisoner to be infected with an epidemical distemper, confines another prisoner against his will in the same room with him, by which he catches the infection, and is suffered to continue there and die, this is a felonious killing. 93. (N)

So also to confine a prisoner in a damp room, denying him the conveniences which decency requires, by which filth he catches a distemper and dies, it is felonious. *ib.* (N)

By 14 Edw. 3. c. 10. if any gaoler or under-keeper, by duress, make any prisoner to become an appeller, against his will, he is guilty of felony. 413

It is immaterial whether the approvement be true or false, or whether the appellee be acquitted or condemned. *ib.* s. 2

GARDENS.

The offence of robbing orchards and gardens described. 166

GARMENTS.

By 6 Geo. 1. c. 23. to assault any person in the public highway, with intent to spoil their clothes or garments, is transportation for seven years. 114

Cases decided by the twelve judges on the above statute. 115

GATES.

See FENCIBLES.

By 6 Geo. 1. whoever shall break down the gates &c. of such places as the act describes, shall be committed to the house of correction, &c. 355

The punishment for destroying of turnpike gates. 340

Erecting a new gate in a highway is a nuisance, because it intercepts that free, open, and legal passage the people before enjoyed. 694. s. 9.

But where a gate has continued time out of mind, it shall be intended that it was set up at first by consent, or laying out the road, in which case the people never had a free passage. 146.

A gate that is a common nuisance may be pulled down by any person. 695. s. 12.

GOD.

All blasphemies against God, as denying his being or providence, or reproaching Jesus Christ, or falsely pretending to extraordinary commissions from God, are high offences by the common law, punishable with fine, imprisonment, and such infamous corporal punishment as the court shall direct. 358

By 9 & 10 Will. 3. c. 32. denying any one of the persons in the holy Trinity to be God, or maintaining that there are more Gods than one, &c. on conviction at Westminster or assizes, renders the offender incapable of any office for the first, disabled to sue, &c. for the second offence. 355. s. 13.

[Repealed as to the Trinity, 53 Geo. 3. ch. 160. *ib.* (N)]

GOLD.

See COIN.

Endeavours to find out the Philosopher's Stone being found prejudicial, the 5 Hen. 4. c. 4. made it felony to use the craft of multiplication, but is repealed by 1 Will. & Mary, c. 30. 42

By 8 & 9 Will. 3. c. 26. whoever shall blanch copper, &c. or deal in any malleable composition or mixture of metals, which shall be heavier, and look and touch like standard gold, he shall be guilty of felony. 42. s. 14.

The standard of gold consists of two carats of copper melted with twenty-two carats of fine gold. 43. s. 16.

The king cannot by his prerogative alter the standard. *ib.*

GOLDSMITH.

See BULLION.

By 6 & 7 Will. 3. c. 17. no molten silver shall be stamped, unless it be marked and stamped at Goldsmith's Hall, and certified under the hand of one of the wardens of the goldsmiths, that oath hath been made by the owner and one credible witness that no part thereof was the current coin of the kingdom, nor the clippings thereof, nor plate, &c. 38

No broker, not being a trading goldsmith or refiner of silver, shall buy or sell any bullion, on pain of six months imprisonment. 41

GOOD BEHAVIOUR.

See BEHAVIOUR, SURETY, RECOGNIZANCE.

By 34 Edw. 3. c. 1. justices of peace are empowered to restrain offenders, rioters, &c. and to take and arrest all those they found by indictment or suspicion, and put them in prison—and to take of all them that be not of good fame, sufficient surety and mainprise for their good behaviour. 485

Persons of evil fame includes persons of scandalous behaviour in other respects than those relating to the peace. *ib.* s. 1.

A man may be bound to good behaviour for offences *contra bonos mores*, as haunting bawdy houses with women of bad fame; keeping bad women in one's house; speaking contemptuously of a justice or a mayor, though not in the execution of office, and also of a constable in the execution of his office. *ib.* s. 2.

But no one ought to be bound to good behaviour for rash, quarrelsome, or unmannerly words, unless they tend to break the peace or abuse the government. 486. s. 3.

But there are no precise rules, and the magistrate has a discretionary power. *ib.*

Surety



Surety may be taken of all he may justly suspect to be dangerous, quarrelsome, or scandalous, as those who sleep in the day and wake in the night, or keep suspicious company, reputed robbers, &c. eaves droppers, common drunkards, and all persons whose conduct renders them of evil fame. 486. s. 3

A variety of instances enumerated in which surety for behaviour has been taken. *ib. notis.*

#### GOVERNMENT.

Contempts against the king's government. c. 6 p. 21

#### GRANARY.

By 11 Geo. 2. c. 22. whoever shall destroy any store-house, granary, or other place where corn shall be then kept, in order to be exported, or shall unlawfully enter any such place, and take and carry away any corn, flour, meal, or grain therefrom, or shall throw abroad or spoil the same, shall be transported for seven years. 345

#### GRAND JURY.

The court may impose an immediate fine on a person who refuses to give evidence before the grand jury concerning a crime. 65. s. 4.

But an indictment of *two counts*, one for a riot, indorsed by the jury *ignoramus*, the other for an assault returned *billa vera*, is good, *Rex v. Fieldhouse*. 506

#### GRAND LARCENY.

See LARCENY.

Grand larceny is a felonious and fraudulent taking and carrying away the mere personal goods of another, not from the person, nor out of his house, above the value of 12*d.* 142

#### GRANT.

See MONOPOLY.

All grants of monopolies relating to any known trade are void by the common law. 624. s. 1.  
By the common law, the king's grant to any particular corporation of the sole importation of any merchandize is void. 625

The grant of the sole engrossing of wills and inventories in a spiritual court, or of the sole making of bills, pleas, and writs, in a court of law, to any particular person, is void. *ib. s. 3.*

A grant for the sole making, importing, and selling of playing cards, is void. *ib. s. 4.*

Nothing can exclude a subject from trade but an act of parliament. *ib. (N)*

But the king may grant to any one the sole use of any art invented, or first brought into the realm by the grantee. 628. s. 21.

The king may grant to particular persons the sole use of some particular employments; as printing the holy scriptures, law books, &c. *ib.*

By 21 Jac. 1. c. 3. all grants of monopolies are declared void. 625

How persons aggrieved by such grants shall be relieved. 627

But this statute shall not extend to grants of privilege, for the term of fourteen years, for the sole working or making of any new manu-

facture, within this realm, to the true and first inventors. 628

Manufactures newly brought into the realm are within this grant of privilege. 623. s. 22

#### GRASS.

It is no larceny, by the common law, to steal corn or grass growing, but a bare trespass. 148

#### GREAT SEAL.

By 23 Edw. 3. c. 2. if a man do counterfeit the king's great or privy seal, he shall be guilty of high treason. 19. s. 48

This extends to aiders and consenters as well as to actors. *ib. s. 49.*

But no attempt to counterfeit either of them will amount to this crime. *ib. s. 50*

Nor is fixing the great seal to a patent, without a warrant for so doing, high treason. 20. s. 51

Nor is any alteration of the matter of an instrument to which the seal is affixed, a counterfeiting of it. 21. s. 52

By 7 Anne, c. 21. to counterfeit the seals used in Scotland is high treason. 20

#### GUEST.

A guest who has a piece of plate set before him in an inn, may be guilty of felony in fraudulently taking it away. 144. (N)

If an innkeeper refuse either to receive a traveller, as a *guest*, into his house, or to find him victuals or lodging, upon his tendering him a reasonable price for the same, he may be sued by action for damages, and also indicted and fined at the suit of the king. 714. s. 2

And it is said that the constable may compel him to receive such guest. *ib.*

#### GUDGEONS.

The usual nets for taking them may be used, provided they are not used for fish prohibited to be taken by such nets. 656

#### GUINEA.

See COIN.

The impression of a guinea being made on a piece of hammered gold, not round, and in an impassable state, is not a counterfeiting of the current coin. 20

By 15 Geo. 2. c. 28. to wash, gild, or colour, any lawful or counterfeit shilling, or a sixpence, or add to or alter the impression of either side of such shilling or sixpence, with intent to make the same resemble, or look like, or pass for, a guinea or a half-guinea, or to aid or counsel therein, &c. is high treason. 26. s. 82

#### GUNPOWDER.

By 21 Jac. 1. c. 3. against grants of monopolies, it shall not extend to grants concerning digging, making, or compounding of saltpetre or gunpowder, &c. 626. s. 10

By 16 Car. 1. c. 21. all persons may import, make,









